TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 208.

THEOPHILUS KING, ADVERSE CLAIMANT, AND THE LIPPITT WOOLEN COMPANY, ALLEGED TRUSTEE, PLAINTIFFS IN ERROR,

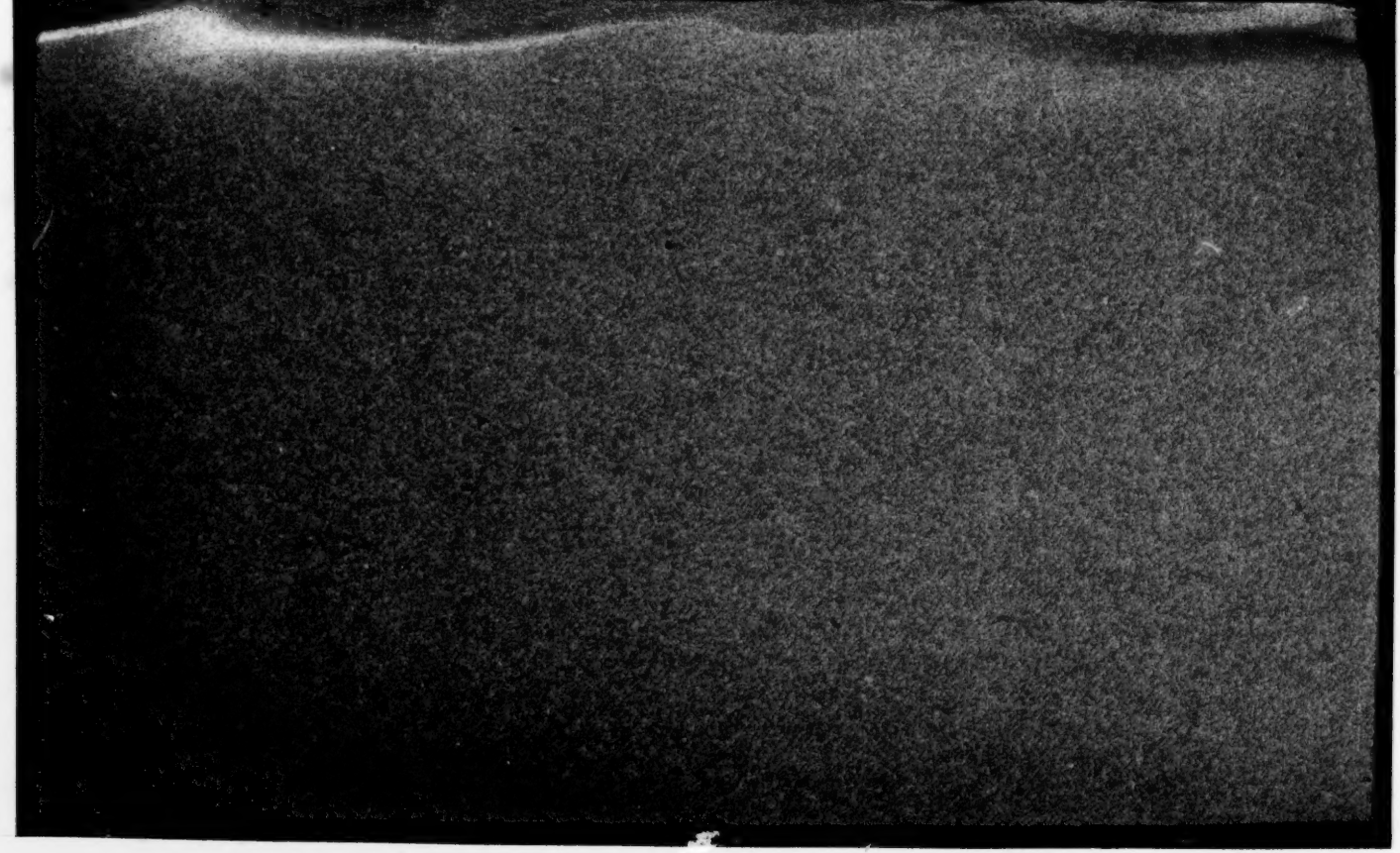
vs.

JOHN A. CROSS, GIDEON P. BROWN, EDWARD STREET, AND AMASA CLARKE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

FILED OCTOBER 25, 1894.

(16,703.)



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INDEX.

	Original.	Print
Caption	*a*	1
Transcript from court of common pleas	1	1
Affidavit of Charles H. Merriman, treasurer of Lippitt Woolen Company, garnishee	1	1
Exhibit—Record from superior court of Suffolk county, Mass.	2	1
Chief justice's certificate	2	1
Attachment writ, &c.	3	2
Sheriff's return	7	4
Default of Hiram Leonard, trustee	7	4
Order of notice	8	4
Sheriff's return	9	5
Appearance for defendant	10	5
Answer of defendant	10	6
Demurrer to answer	12	7
Sheriff's return	13	8
Order overruling demurrer	13	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 29, 1898.

	Original.	Pri.
Motion for rehearing on demurrer	13	8
Order overruling motion for rehearing	13½	8
Motion to amend	14	9
Answer to amended declaration	15	10
Replication	16	10
Certified copies of notes	23	14
Petition of Steese and Clarke	28	17
Order on petition	29	17
Citation	30	18
Warrant	32	18
Assignment	36	20
Agreed statement of facts	38	20
Judgment	46	26
Agreement staying execution	46	26
Clerk's certificate	47	26
Additional affidavit of Charles H. Merriman	48	27
Interrogatories to Lippitt Woolen Co	56	31
Answer of Lippitt Woolen Co	59	33
Letter, Miner & Roelker to H. A. Boutwell, October 19, 1891	64	35
Letter, Roelker to H. L. Boutwell, March 9, 1892	64	35
Letter, H. L. Boutwell to Miner & Roelker, October 20, 1891	65	35
Bond of James B. Case to Robert L. Lippitt	66	36
Amendment to answer of Lippitt Woolen Co	68	36
Interrogatories to Lippitt Woolen Co	70	38
Answers of Lippitt Woolen Co	71	38
Motion of T. King to intervene	73	39
Exhibit—Record from court of insolvency for county of Norfolk, Massachusetts	88	49
Judge's certificate	88	48
Register's certificate	89	48
Petition of Steese and Clarke	90	48
Order on petition	91	49
Citation	91	49
Warrant	93	50
Assignment	97	52
Letter of C. T. Davis to Geo. E. Webster, clerk, March 15, 1892	99	52
Amendment to petition of King to intervene	100	53
Motion to amend	101	53
Record from superior court of Suffolk county, Massachusetts	103	54
Chief justice's certificate	103	54
Attachment writ, &c	104	55
Sheriff's return	106	56
Default of Hiram Leonard, trustee	107	57
Order of notice	107	57
Appearance for defendant	108	57
Answer of defendant	109	58
Demurrer to answer	111	60
Sheriff's return	112	60
Order overruling demurrer	112	60
Motion for rehearing on demurrer	112	61
Order overruling motion for rehearing	113	61
Motion to amend	113	61
Answer to amended declaration	115	62

	Original.	Print.
Replication	115	63
Certified copies of notes	122	67
Petition of Steese and Clarke	127	69
Order on petition	128	70
Citation	128	70
Warrant	129	71
Assignment	132	73
Agreed statement of facts	133	74
Judgment	141	78
Agreement staying execution	142	79
Clerk's certificate	142	79
Order granting leave to King to become party	143	79
Exhibit B—Record from court of insolvency for county of Norfolk, Massachusetts	144	80
Judge's certificate	144	80
Register's certificate	145	80
Draft of agreement between King and assignees	146	80
List of assets	151	83
List of suits	152	83
Petition of assignees for leave to make sale	153	84
Exhibit D—Agreement between King and assignees, November 19, 1890	155	85
List of suits	160	87
List of assets	161	88
Exhibit E—Record from court of insolvency for county of Norfolk, Massachusetts	162	88
Judge's certificate	162	88
Register's certificate	163	88
Declaration of John M. Graham	164	89
Statement of account	166	90
Declaration of John M. Graham	169	92
Statement of account	171	93
Decision	173	94
Petition for new trial by plaintiff	190	102
Petition for new trial by adverse claimants and alleged trustee	192	103
Statement of evidence and rulings	208	110
Testimony of Gideon P. Brown	211	112
John A. Cross	220	117
Gideon P. Brown (resumed)	229	122
Gideon P. Brown (recalled)	237	126
John A. Cross (recalled)	240	128
Opinion of appellate division	242	129
Record of case	290	152
Judgment	293	153
Clerk's certificate	294	154
Writ of error	295	154
Return on writ of error	296	155
Citation and service	297	156

a Certified copy of record and proceedings and certain documents and exhibits designated by the attorneys of Lippitt Woolen Company and Theophilus King in the case of John A. Cross *vs.* Brown, Steese & Clarke, No. 4867, common pleas division of the supreme court, county of Providence, State of Rhode Island and Providence Plantations, September session, A. D. 1895.

1 (*Copy Affidavit of Lippitt Woolen Company, Garnishee.*)

(Filed December 6, 1889.)

PROVIDENCE, *sc:*

Court of Common Pleas, Dec. Term, 1889.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK.

I, Charles H. Merriman, treasurer of the Lippitt Woolen Company, upon whom garnishee process was served in the above-entitled cause, on oath depose and say that at the time of the service of the original writ in said cause, as appears by the return of the officer thereon, there was in the hands and possession of the said Lippitt Woolen Company as the trustee of said defendants the sum of $11,938.39 and also 357 wool sacks, and except as aforesaid that there was no personal estate of any name or nature in the hands and possession of said Lippitt Woolen Company as the trustee of said defendants.

(S'g'd) CHAS. H. MERRIMAN.

Subscribed and sworn to at Providence, in the county of Providence, this 5th day of December, A. D. 1889, before me—

(S'g'd) JOHN D. THURSTON,
Justice of the Peace.

2 (*Copy of Additional Affidavit of Lippitt Woolen Company, Garnishee, Allowed to be Filed by Order of Court—Roger, J.—June* 13, 1893.)

(EXHIBIT.)

[L. S.] COMMONWEALTH OF MASSACHUSETTS:

I, Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk, and hath the keeping of the files, records, and proceedings of said court within and for said county; also of the late court of common pleas within and for said county, and of the late superior court of the county of Suffolk aforesaid; that he is by law the proper person to make out and to certify copies of the files, records, and proceedings of said

several courts; that full faith and credit are and ought to be given to his acts and attestations done, as aforesaid, and that his attestation to the papers hereunto annexed, being numbered 1 to 55, inclusive, of the files, records, and proceedings of the said superior court, is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this sixth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

(S'g'd) ALBERT MASON,
Chief Justice of the Superior Court.

3 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court for the said county of Suffolk it is thus contained, the following being the entire record in the case:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

[SEAL.] To the sheriffs of our several counties or to their deputies, Greeting:

We command you to attach the goods or estate of the Lippitt Woolen Co., a corporation organized under the laws of the State of Rhode Island & having a usual place of business in Providence, in said State, to the value of fifteen thousand dollars, and summon the said defendant (if it may be found in your precinct) to appear before our justices of our superior court, to be holden at Boston, within and for our said county of Suffolk, on the first Monday of May next, then and there in our said court to answer unto William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of said Providence, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Brown, Steese & Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk—

In an action of contract.

4 And the plaintiffs say that they are assignees in insolvency of the estates of Gideon P. Brown, of Boston, in said county; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings within and for said county of Norfolk, and that the defendant owes the plaintiffs the sum of eleven thousand nine hundred and thirty-eight and $\frac{39}{100}$ —($11,938.39) for goods sold to the defendant by said insolvents, an account whereof is hereto annexed, with interest thereon from the first day of November, 1889.

By their attorney, CHARLES THORNTON DAVIS.

5 *Account Annexed.*

The Lippitt Woolen Co. to Wm. R. Dupee, Sam'l P. Colt, and Weston Lewis, assignees, Dr.

1889.			
July 12.	To 3 bales No. 2 Oregon fleece wool.....		$269.23
	" carting.....		.54
	July 12, 60 days,		
Aug. 6.	" 45 bales No. 2 Oregon fleece wool.....		4,214.21
	" carting		8.10
	Sept. 1, 60 days,		
" "	" 101 bags Territory fleece wool.....		7,269.40
	" carting		8.08
	Aug. 1, 60 days,		
" "	" 3 bags Territory fleece wool.....		179.17
	" carting		.38
			$11,949.11
" "	By credit allowance.....		10.72
			$11,938.39

6 To the damage of the said plaintiffs (as they say) the sum of fifteen thousand dollars, which shall then and there be made to appear with other due damages; and whereas the said plaintiffs say that the said defendant has not in its own hands and possession goods and estate to the value of fifteen thousand dollars aforesaid which can be come at to be attached, but has intrusted to and deposited in the hands and possession of Hiram Leonard, doing business and having a usual place of business in said Boston under the name of H. Leonard & Co., trustee of the said defendant, goods, effects, and credits to the said value. we command you, therefore, that you summon the said supposed trustee (if he may be found in your precinct) to appear before our justices of our said court, to be holden as aforesaid, to show cause, if any he has, why execution to be issued upon such judgment as the said plaintiff may recover against the said defendant in this action (if any) should not issue against its goods, effects, or credits in the hands and possession of the said trustee.

And have you there this writ with your doings therein.

Witness Albert Mason, Esquire, at Boston, the twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JOS. A. WILLARD, *Clerk.*

7 On which said writ are the following returns by the officer who served the same :

SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

By virtue hereof I this day, at 10 minutes past one o'clock p. m., summoned the within-named trustee, Hiram Leonard, to appear and show cause at court, as within directed, by delivering to him in hand an attested copy of this writ.

FRED H. SEAVEY,
Deputy Sheriff.

Service & tr.....	.33
Copy.....	1.00
	1.58

SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

The within-named defendant, The Lippitt Woolen Co., not being incorporated under the laws of this Commonwealth and having no place of business, office, agent, or attorney therein known to me as such and duly accredited within my precinct, I could make no service upon it.

FRED H. SEAVEY,
Deputy Sheriff.

On said first Monday of May, A. D. 1891, the plaintiffs appeared, by Charles Thornton Davis, Esquire, their attorney, and entered the above action, and no answer having been filed therein by the said Hiram Leonard, trustee, at the expiration of ten days from said first Monday, as required by law, a default was thereupon entered against him on the fifteenth day of said May.

And on the sixteenth day of said May the following order was entered by the court, to wit:

8 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court, April Sitting, A. D. 1891.

William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of Providence, in the State of Rhode Island, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Browne, Steese & Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk, pl'ffs, *vs.* The Lippitt Woolen Co., a corporation organized under the laws of said State of Rhode Island and having a usual place of business in Providence, in said State, def't, and Hiram Leonard, doing business and having a usual place of business in said Boston, under the name of Leonard & Co., supposed trustee.

This is an action of contract to recover fifteen thousand dollars alleged to be due to the plaintiffs from the defendant corporation on

the twentieth day of April, 1891, as set forth in the plaintiffs' writ of that date.

And it appearing to the court by the suggestion of the plaintiffs and on inspection of the officer's return on the plaintiffs' writ that the defendant corporation is not of this Commonwealth nor now resident therein at the time of the service of said writ, and that it has no tenant, agent, or attorney in this Commonwealth known to the plaintiffs or to said officer, and that no personal service of said writ has been made upon the defendant corporation—

It is ordered by the court here that the plaintiffs give notice to the defendant corporation of the pendency of this action by serving it with a true and attested copy of this order fourteen days
9 at least before the first Monday of June, 1891, that it may then and there appear and show cause why judgment in the above-entitled action should not be rendered against it, and that this action be continued to the next sitting of the court, and so from sitting to sitting until notice shall have been given to the defendant corporation agreeably to this order.

DANIEL W. BULLARD, *Ass't Clerk.*

(Endorsed:) No. —. Chas. T. Davis. Dupee & *al. v.* Lippitt Woolen Co. Personal order of notice. Suffolk clerk's office. Filed Jun- 18, 1891. Jos. A. Willard, cl'k superior court.

PROVIDENCE, R. I., *May* 16, 1891.

I, Franklin B. Ham, hereby certify that I have served a true and attested copy of the within notice this day on the Lippitt Woolen Company by leaving the same in the office of said company in the hands of Charles H. Merriman, the treasurer thereof.

FRANKLIN B. HAM,
Deputy Sheriff.

Subscribed and sworn to in the city of Providence the 16th day of May, A. D. 1891, before me—

[SEAL.] FRANK HEALY,
Notary Public.

Fees, 2.80.

10 And afterwards, during said sitting, to wit, on the fifth day of June, in said year, the following appearance in writing was entered, to wit:

SUFFOLK, *ss:*

Superior Court, April Sitting, 1891.

WILLIAM R. DUPEE ET AL., Pl'ff-,
v.
LIPPITT WOOLEN CO. & TR., Def't.

In the above action I appear for defendant.

H. L. BOUTWELL,
209 *Washington St., Boston.*

Also on said last-named day the following was filed:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court.

WILLIAM R. DUPEE ET ALS. *vs.* THE LIPPITT WOOLEN CO. & TR.

Defendant's Answer.

And now comes the defendant in the above-entitled cause and answering says that it admits the correctness of the account annexed in the plaintiffs' declaration, and that it admits indebtedness to said Brown, Steese & Clark to the amount of $11,938.39, as therein set forth.

And this defendant, further answering, says that on the 13th day of August, 1889, at 2.18 o'clock in the afternoon, at Providence, in the State of Rhode Island, being indebted, as aforesaid, it was served with garnishee process issuing out of the court of common pleas within and for the county of Providence and said State of Rhode Island in an action of contract, wherein one John A. Cross, of said Providence, is plaintiff and said Brown, Steese & Clarke are
11 defendants, which action is still pending in said court, and in said action this defendant, on the 6th day of December, 1889, filed its answer as garnishee, admitting and setting forth its said indebtedness to said Brown, Steese & Clarke of $11,938.39, and on the 20th day of March, 1890, a verdict in said suit of Cross *vs.* Brown, Steese & Clarke & Trustees was rendered for the plaintiff in the sum of $41,534.27, and subsequently a motion in arrest of judgment and interrogatories to garnishees other than this defendant were filed and said action continued *nisi* without this defendant having as yet been charged as garnishee therein or motion therefor made or judgment therefor rendered, all of which appears by the records of said court.

And this defendant is informed and believes, and therefore avers, that prior to the date of service upon it od said process in said suit of Cross *vs.* Brown, Steese and Clarke & Trustees, to wit, on August 12, 1889, this defendant being indebted as aforesaid, Edward Steese and Amasa Clarke, members of said firm of Brown, Steese and Clarke, filed a petition in the court of insolvency within and for the county of Norfolk, in this Commonwealth, praying that firm of Brown, Steese and Clarke might be declared insolvent, publication of the notice of the fil*l*ing of which petition was made on the early morning of August 23, 1889, and that on the 21st day of said August a warrant in insolvency issued from said court against the joint and several estate of said Brown, Steese and Clarke, and that on the 4th day of September, 1889, the plaintiffs were duly elected and appointed assignees in insolvency, and that the judge of said court of insolvency, by an instrument under his hand, purported to assign and convey to the plaintiffs as assignees, as

aforesaid, all the estate, real and personal, of said debtors,
12 except such as is by law exempt from attachment, and all their deeds, books, and papers relating thereto; all of which appears by the records of said court of insolvency; that said firm was composed of Gideon P. Brown, Edward Steese, and Amasa Clarke, all of whom were citizens of said Commonwealth of Massachusetts, and which firm was located and carried on business in Boston, in said Commonwealth, and had no place of business whatever elsewhere. But this defendant is advised that on the foregoing facts and by virtue of the laws of said State of Rhode Island and his attachment thereunder the said Cross has a lien on said debt of this defendant to said Brown, Steese and Clarke; and this defendant is further advised, and therefore avers, that on the foregoing facts the said assignment made by the judge of the said court of insolvency, as aforesaid, could not and therefore did not transfer to and vest in the plaintiffs, as assignees, as aforesaid, the said debt of this defendant, this defendant being a citizen and resident of said State of Rhode Island.

And this defendant, further answering, says that it owes said amount, as aforesaid, and is ready and willing to pay the same to whomsoever it lawfully may on order of court, provided and whenever it may do so without the liability of being twice compelled to pay the same debt, and further says not.

LIPPITT WOOLEN CO.,
[SEAL.] By CHAS. H. MERRIMAN, *Treasurer.*

And on the eighth day of said June the following was filed:

SUFFOLK, *ss:*

Superior Court, June 5, 1891.

WILLIAM R. DUPEE & ALS., Assignees,
vs.
LIPPITT WOOLEN COMPANY.

Plaintiffs' Demurrer.

And now come the plaintiffs in the above-entitled action
13 and demur to the defendant's answer filed therein, specially assigning as cause for demurrer that the answer does not disclose a legal defence.

By their attorney, CHARLES THORNTON DAVIS.

And on the eighteenth day of said June said order of notice was returned into court with the following thereon:

PROVIDENCE, R. I., *May* 16, 1891.

I, Franklin B. Ham, hereby certify that I have served a true and attested copy of the within notice this day on the Lippitt Woolen Company by leaving the same in the office of said company in the hands of Charles H. Merriman, the treasurer thereof.

FRANKLIN B. HAM,
Deputy Sheriff.

Subscribed and sworn to, in the city of Providence, the 16th day of May, A. D. 1891, before me—

[SEAL.] FRANK HEALY,
Notary Public.

Fees, 2.80.

Thence the same was continued to the July sitting, 1891, and at a hearing, on the seventh day of July last aforesaid, it was ordered by the court that said demurrer be overruled. Thereupon, on the fourteenth day of said July, the plaintiffs filed the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.*:

Superior Court.

WM. R. DUPEE ET ALS.
vs.
THE LIPPITT WOOLEN CO. & TR.

Plaintiffs' Motion for Rehearing and Argument on the Question of the Plaintiffs' Demurrer to the Defendant's Answer.

And now come the plaintiffs and say that at the hearing
13½ on the demurrer of the plaintiffs to the defendant's answer in the above-entitled cause counsel retained by the plaintiff-, and who was expected to take part in said argument, was absent through failure to get notice seasonably of the time set for said hearing, and that there were considerations which said counsel desired to submit and of which the counsel who argued the case were not sufficiently informed and which the plaintiffs' counsel believe are of controlling weight in said case, and that the plaintiffs have reasonable cause for fear that they would be deprived of the benefit to which they should be entitled on a judgment in their favor if such judgment should be delayed for the determination of said question by the supreme court.

Wherefore the plaintiffs move this honorable court for a rehearing and argument on the question of the plaintiffs' demurrer to the defendant's answer, and that the decision overruling said demurrer may be reversed, and that judgment for the plaintiff- may be entered in said action.

CHARLES THORNTON DAVIS,
Attorney for Pl'ff-.

And afterwards, during said sitting, to wit, on the eighth day of August, in said year, after a hearing it was ordered by the court that said motion for rehearing on question of demurrer be overruled.

Thence the same was continued to the October sitting, 1891, and thence to the present January sitting, 1892.

And now, on the first day of March, 1892, the plaintiffs file the following, to wit:

SUFFOLK, *ss*:

Superior Court, Feb. 23rd, 1892.

14 WILLIAM R. DUPEE ET ALS.
vs.
LIPPITT WOOLEN CO.

Motion to Amend.

And now come the plaintiffs in the above-entitled action and move for leave to amend their writ and declaration therein by naming as party plaintiff, in the place of these present plaintiffs, Theophilus King, of Quincy, in the county of Norfolk, and by setting in said writ the following:

"The said King having purchased from William R. Dupee, Weston Lewis, and Samuel P. Colt, assignees of the joint and several estates of Gideon P. Brown, Edward Steese, and Amasa Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and said assignees having, under the direction and order of the court of insolvency, sold to said King all claim of said insolvents against said Lippitt Woolen Co."

And by further amending the declaration by inserting in place of the first six lines thereof the following:

"And the plaintiff says that he has purchased from William R. Dupee, Weston Lewis, and Smauel P. Colt, assignees in insolvency of the joint and several estates of Gideon P. Brown, of Boston, in the county of Suffolk; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and that said assignees, under the order and direction of said court of insolvency, have sold to him all right, title, and interest of the said Dupee, Lewis, and Colt, as assignees, as
15 aforesaid, in and to all accounts payable shown by the books of the firm of Brown, Steese and Clarke as due said firm and in and to all claims or choses in action, including the claim herein sued on, which the said insolvents had or which the said Dupee, Lewis, or Colt had, as assignees, as aforesaid, against the defendant, and that the defendant owes the plaintiff the."

By their attorney, CHARLES THORNTON DAVIS.

Which said amendment was allowed; and on the tenth day of said March the defendants file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Plaintiff,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Answer to Amended Declaration.

And now comes the defendant in the above-entitled action, and for answer to the amended declaration therein filed repeats its former answer filed herein, referring to and making the same a part hereof.

By its attorney, H. L. BOUTWELL.

Also on said last-named day the plaintiffs file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff,
vs.
THE LIPPITT WOOLEN CO., D'f't.

Plaintiff's Replication.

16 And now comes Theophilus King, plaintiff in the above-entitled action, and admits and says that the matters of facts set forth in the defendant's answer are true, but denies the conclusions of law on the effect thereof therein alleged on advice.

The plaintiff further says that the indebtedness of said defendant to said Brown, Steese & Clarke was contracted on a sale or sales of wool made by said firm to the defendant at the place of business of said firm, in Boston, Massachusetts, and all of said wool was there delivered to the defendant, and payment therefor was to be made at the office of said firm, in said city of Boston.

Copies of the alleged notes sued on by said Cross in Rhode Island in the action wherein the defendant was summoned as alleged trustee are hereby annexed, marked A and B, and made a part hereof, whereby it appears and the plaintiff says that said alleged notes were made to and were payable only at the banking-house of the International Trust Company, in said Boston, which trust Co. is a corporation established under the laws of said Commonwealth and has its principal and only place of business in said Boston, and that payment of said alleged notes was secured by the pledge to said International Trust Co. of the collateral recited in each.

The plaintiff further says that said International Trust Co. held both of said alleged notes and all said collateral more than sixty

days from the dates of said notes respectively; that said firm of Brown, Steese & Clarke stopped payment on or about Sept. 5th, 1889, on the night of which day said Gideon P. Brown, because of the financial difficulties of his said firm, left said city of Boston on his way out of this country, to which he did not return for
17 many months; that on or about Sept. 7th, 1889, the probable embar-assment of said firm had been publicly rumored and published in said Boston and brought to the notice of said trust Co., after which and on or about the same date said International Trust Co. separated each of said alleged notes from the collateral recited in them respectively, and, endorsing said alleged notes, transferred or purported to transfer the same to said Cross, who brought his said suit thereon.

That said International Trust Co. at the time of said alleged transfer to said Cross held many and other obligations of said firm of Brown, Steese & Clarke in the form of instruments of the same tenor as said alleged notes, except as to dates, amounts, periods of maturity, and the recitals of collateral, but payment whereof was secured by pledges held with like alleged powers for the application of the proceeds thereof, as is set forth in said alleged notes.

Of all of which facts, equities, and duties arising therefrom as they then existed or might arise said Cross knew, or, the plaintiff says on information and belief, had sufficient notice to put him on such enquiry as would have discovered the same; that said International Trust Co. has realized large sums, proceeds of said collateral to said other obligations, and from the collateral pledged with and for the payment of said alleged notes sued on by said Cross said International Trust Co. has already received over twenty-eight thousand dollars.

That said International Trust Co. has made proof of certain of its said obligations of said firm of Brown, Steese & Clarke or alleged balances thereof to the amount of many thousands of dollars in said insolvency proceedings of said firm, and has received full dividends of said estate thereon, and that said Steese and said Clarke
18 have received their full discharges in said proceedings from all claims provable against them or said firm in the premises.

The plaintiff further says that by the laws of the State of Rhode Island in relation to insolvent debtors (Public Statutes R. I., chap. 237, sec. 12), herein referred to and made a part hereof, it is provided that:

"Whenever the property of any debtor shall be attached or levied upon by any creditor, the debtor may at any time before such property shall be sold and the proceeds thereof applied to the payment of the claim or judgment upon which such attachment or levy shall have been made, and within sixty days after such attachment or levy, dis-olve such attachment or levy by making and having recorded in the records of the town or city where the assignor resides or where any of the real estate of such debtor is located, an assignment of all the property and estate of such debtor, except so much thereof other than debts secured by bills of exchange or negotiable promissory notes as is or shall be exempt from attachment by stat-

utes of the State and of the United States, to some citizen of the State of Rhode Island, for the equal benefit of all his creditors in proportion to their respective claims, except as is provided in sec. 14 of said chap. 237 and such assignment shall be effectual to convey all the property and estate of such debtor, except as aforesaid.

That section 14 of said chapter, also referred to and made a part hereof, is as follows:

"No assignment hereafter made for the benefit of creditors shall give to any one creditor any preference over the claims of any other creditor, except the creditor be the United States or the State of Rhode Island, or for the wages of labor performed within six
19 months previous to such assignment, not exceeding one hundred dollars to any one person: Provided however, that the expenses of executing the assignment shall first be paid out of the estate."

And the plaintiff says that also in other respects and particulars it appears in the laws and practice of said State of Rhode Island that the policy of said State and that of the Commonwealth of Massachusetts are substantially alike and in accord in securing an equal *pro rata* distribution of the estate of insolvents to and among their creditors, and in defeating and avoiding all preferences and priorities under attachment on mesne process or otherwise.

And the plaintiff further says that in the Constitution of the United States, article 4, section 2, it is established that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and the plaintiff, claiming the benefit of said provision in said Constitution, says that said Brown, Steese & Clarke were all of them citizens of the United States and of the Commonwealth of Massachusetts, and as such, and being insolvent, were, with all their firm and individual assets, subject to the operation of the insolvent laws of Massachusetts, and could not make valid voluntary assignments in violation thereof nor secure such assignments otherwise than by and through the proceedings instituted by them in insolvency, as aforesaid, and that neither of them was a citizen or resident of or held or owned any real estate in said State of Rhode Island; nor could they secure an assignment of their assets solely to a citizen or citizens of Rhode Island, but the same were assigned in said proceedings to one citizen of said State and to two citizens of Massachusetts, which assignment was made and said trust thereof accepted prior to the expiration of sixty
20 days from the date of the service of said trustee process on said Lippitt Woolen Co. in the case of said Cross aforesaid.

And the plaintiff, referring to said insolvency proceedings, and annexing a copy of the petition of the debtors and of the adjudication thereon, and the warrant issued thereon, and of the assignment of the assets of said insolvents to the assignees therein hereto, and making all the same a part hereof, claim- that all attachments in said suit of said Cross aforesaid were also dissolved under and by virtue of the laws of Rhode Island in said provisions thereof which secure a privilege, immunity, and tenure of property to citizens, residents, and land-owners to dissolve attachments by mesne process

upon and to effect an equal *pro rata* distribution of their assets by assignments to citizens of said State, which privilege, immunity, and tenure, alike of the assignor and assignee in said assignments, the plaintiff claims pertains also to the citizens of the several States under the Constitution of the United States aforesaid.

The plaintiff further says that no service was ever obtained upon said firm of Brown, Steese & Clarke or any member thereof in said suit of said Cross; nor was any appearance for them or any of them entered in said suit until after the assignment of their assets in said insolvency proceedings aforesaid.

And the plaintiff, relying upon said insolvent laws and said proceedings in insolvency in said court of insolvency as a court of record and said assignment as a judicial proceeding, also claims full benefit and protection of article 4, section 1, of the Constitution of the United States and the laws of the United States made in pursuance thereof, which article and section provide- "that full faith and credit shall be given in each State to the public acts,
21 records and judicial proceedings in every other State," and that said State of Rhode Island and the courts thereof are thereby bound to recognize said assignment, with effect to vest all the assets of said insolvents in said State in said assignees free from said alleged attachments in said suit of said Cross.

The plaintiff also pleads and relies upon article 6 of the Constitution of the United States as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

And the plaintiff further says that by a certain contract or agreement made under the order and direction of the court of insolvency within and for the county of Norfolk the plaintiff purchased and acquired from the assignees in insolvency of said Brown, Steese & Clarke all the property and assets formerly belonging to said firm and promised and guaranteed said assignees therefor such sum as should be necessary to pay certain expenses incurred and ten per cent. upon all claim allowed by said court of insolvency in said proceedings against said insolvent estates; whereby the plaintiff acquired active interest in and claim upon all property of said Brown, Steese & Clarke, and all claims, funds, or choses in action to them belonging or pertaining, and stands in the place of said Brown, Steese & Clarke, entitled to all rights, remedies, and defences which they could have in these or any other proceedings in this Commonwealth or by virtue of the laws thereof, or elsewhere.

And the plaintiff further says that the laws of said State of Rhode Island provide (Acts of 1884, chap. 433) that—
22 "Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate, under an assignment or otherwise, may on his own motion become a party to the action so far as respects the title in said personal estate.

The answer sworn to by a trustee shall be considered true in de-

ciding how far said trustee is chargeable, but either party to the suit, or any claimant to the estate so attached, may allege and prove any facts not stated or denied by said trustee that may be material in so deciding."

And that by virtue thereof he has filed a motion in said suit brought by said Cross in Rhode Island praying that he may become a party to said action so far as respects the title to the personal estate of said Brown, Steese & Clark in the hands of said Lippitt Woolen Company, alleged trustee by attachment on trustee process therein, and may recover and receive the same should said alleged trustee not be discharged in said process, and may be heard as to the charging of said trustee; in which motion and amendments which he offers thereto he has set forth all the facts which appear in the pleadings herein, including this replication, and has given said Lippitt Woolen Co. full notice thereof, and has further set up in said motion and petition that said Cross did not begin and is not prosecuting said suit for himself as a *bona fide* domestic creditor of said Brown, Steese & Clarke in said State of Rhode Island, but colorable only, for the benefit of said International Trust Co. of Boston aforesaid.

Wherefore, for all and singular the premises and the pleadings herein, the plaintiff claims that the defendant is not chargeable as trustee in said suit by said Cross in Rhode Island if it, as in duty bound, discloses the facts of this suit and the pleadings herein set forth.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.

23 A.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *April 9th*, 1889.

On demand after date, for value received, we promise to pay to the order of the International Trust Company, at its place of business, in Boston, twenty thousand dollars, with interest at the rate of 5½ per cent. per annum, having deposited with said trust company, as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

Business paper as follows:

H. H. Hollis, 10,000; Phœnix Woolen Co., 7,036.63.

C. A. Phelbuck, 2,500; Mackintosh, 5,000.

The market value of which is now $—, with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any substitutes therefor, or any additions thereto, at any broker's board or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's

board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

24 Due —— —.

BROWN, STEESE & CLARK.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th, 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court, and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[SEAL.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

25 (Endorsed:) Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. Court of common pleas, county of Providence, State of Rhode Island.

B.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *May 7th*, 1889.

On demand, after date, for value received, we promise to pay to the order of the International Trust Company, at its place of busi-

ness, in Boston, twenty thousand dollars, with interest at the rate of 5 per cent. per annum, having deposited with said trust company, as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

Note Atlantic, May 7, 4 mos., 10,000; endorsed, Owen Bros.
" " April 11, 5 mos., 10,000; " "

The market value of which is now $—, with the right to call for additional security should the same decline, and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any
26 substitutes therefor, or any additions thereto at any broker's board, or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

Due —— —.

BROWN, STEESE & CLARK.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th, 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

27 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc.:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[SEAL.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

(Endorsed:) Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. Court of common pleas, county of Providence, State of Rhode Island.

And also on said last-named day the parties file the following, to wit:

28 To the honorable the judge of the court of insolvency in and for the county of Suffolk, in the Commonwealth of Massachusetts:

Respectfully represent Edward Steese and Amasa Clarke, both of Brookline, in the county of Norfolk, that they and Gideon P. Brown, of Boston, in the county of Suffolk, constitute the firm of Brown, Steese & Clarke, doing business in said Boston; that they are inhabitants of this State, and that the said Steese and Clarke have been residents of said county of Norfolk for upwards of three months next preceding the date of this petition, and that said firm and all the individual members thereof are indebted in divers sums of money, amounting in the whole to not less than two hundred dollars, each contracted, *while* such judgments *which* they and each of them and said firm are unable to pay in full, and they, the petitioners, wish to surrender all their joint and separate property for the benefit of their joint and separate creditors and to obtain a discharge from their said joint and separate debts, according to the statutes in this behalf provided.

Wherefore they pray that a warrant may be issued for taking possession of the joint estate of said firm and of the separate estate of its several members, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD STEESE.
AMASA CLARKE.

29 NORFOLK, *ss:*

AUG. 10, A. D. 1889.

Then personally appeared the above-named Edward Steese and Amasa Clarke and severally made solemn oath that the statements contained in the foregoing petition by them subscribed are true, before me—

M. F. DICKINSON, JR.,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

DEDHAM, *August* 21, 1889.

The foregoing petition having been duly considered, and it ap-

pearing to the satisfaction of the court that the statements therein contained are true, it is ordered that a warrant thereon be issued.

GEORGE WHITE,
Judge of the Court of Insolvency.

30 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] Court of Insolvency.

On the foregoing petition it is ordered that a copy of the said petition and of this order thereon be served personally on the said Gideon P. Brown, of Boston, in the county of Suffolk, or left at his last and usual place of abode forthwith, that he may appear before the court of insolvency, to be holden at Dedham, in and for said county of Norfolk, on the twenty-first day of August current, at ten o'clock in the forenoon, then and there to show cause, if any he has, why the prayer of the said petition should not be granted.

Witness George White, Esquire, judge of said court, and the seal thereof, this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JONATHAN COBB, *Register.*

31 SUFFOLK:

BOSTON, *August 14th*, 1889.

I this day served the within petition and order thereon on the within-named Gideon P. Brown, by leaving an attested copy thereof at his last and usual place of abode, for his appearance at court as within directed.

FRED H. SEAVEY,
Deputy Sheriff.

Sum's	.50
Copy	1.50
Travel to serve	.40
" " return	.80
	$3.20

(Endorsed:) Case No. —. Debtors' petition and citation, in the case of Brown, Steese & Clarke, insolvent debtors. Filed August 12, 1889. Warrant ret'ble —— —, 18—. Aug. 12 cit. issued, ret. Aug. 21, 1889. From the office of M. F. Dickinson, Jr., Equitable building, Boston, Mass. True copy. Attest: John D. Cobb, assist. register.

32 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] To the sheriff of said county of Suffolk or either of his deputies, Greeting:

You are hereby directed forthwith, as messenger, to take possession of all the joint and separate estate, real and personal, of Edward Steese and Amasa Clarke, both of Brookline, in said county of Nor-

folk, and Gideon P. Brown, of Boston, in the county of Suffolk, co-partners, doing business in said Boston under the firm name of Brown, Steese and Clark, insolvent debtors, except such as may be by law exempt from attachment, and of all their joint and separate deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice inside in the newspaper called the Boston Daily Advertiser, printed in Boston, in the county of Suffolk, the first publication to be made forthwith, and to send written notice, by mail or otherwise, within five days after the date hereof, to said debtors and to all the creditors upon the schedule of their creditors to be furnished you by them within three days after the date hereof, which notice shall state:

First. That this warrant has issued against the estate of said debtors.

Second. That the payment of any debts and the delivery of any property belonging to said debtors to them or for their use and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of the debtors to prove their debts and choose one or more assignees of their estate will be held at the court of insolvency, to be holden at Dedham, in
33 said county of Norfolk, on the first Wednesday of September next, at ten o'clock in the forenoon.

And have you there this warrant with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, at Dedham, this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of Court of Insolvency.

34 (No fees will be allowed under Nos. 4 and 5 unless specifically stated.)

Officer's Return.

NORFOLK, *ss:*

SEPTEMBER 3D, A. D. 1889.

By virtue of the within warrant, I have taken possession of all the estate of the within-named insolvent debtor-, except such as is by law exempted from attachment, and of all their deeds, books of account, and papers which have come to my knowledge; and I have published notice by advertisement on two different days, inside, in the newspapers within mentioned, the first publication of which was on the twenty-third day of August, A. D. 1889.

I also, within five days after the date of the within warrant, sent written notice, as within directed, to the within-named debtors and to the creditors named on the schedule herewith returned and delivered to me by said debtors on the twenty-third day of August, A. D. 1889; and all of said notices were according to the directions set out in said warrant.

Fees.

1. Service of warrant	$2.00
2. Necessary travel (at the rate of four cents a mile)	9.60
3. Notice to creditors (at 10 cents each)	15.50
4. Actual expenses in publishing notices as follows:	
Paid Daily Advertiser	3.00
Postage	3.00
5. Actual expenses in custody of property and in other services as follows:	
Cash paid keepers, 14 days	42.00
Custody of property, 14 days	14.00
	$91.10

HOWARD COLBURN,
Deputy Sheriff, Messenger.

35 NORFOLK, *ss:*

SEPTEMBER 4, 1889.

Then personally appeared the said Howard Colburn and made oath that the above expenses returned by him under Nos. 4 and 5 have been actually incurred and paid by him and are just and reasonable, before me—

JOHN D. COBB,
Justice of the Peace.

(Endorsed:) Case No. 737. Warrant in the case of Brown, Steese & Clark, insolvent debtors. Date, August 21, 1889. Returnable 1st Wed. Sept., 1889. First publ'n, August 23, 1889. True copy. Attest: John D. Cobb, assist. register.

36 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] Court of Insolvency.

In the case of Gideon P. Brown, of Boston, in the county of Suffolk, and Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, doing business in said Boston under the firm name of Brown, Steese and Clarke, copartners, insolvent debtors.

Know all men by these presents: that whereas, William R. Dupee of Newton in said Massachusetts, Samuel P. Colt of Providence in the State of Rhode Island and Weston Lewis of Boston in said Massachusetts have been duly appointed assignees in said case.

Now, therefore, I, George White, Esquire, judge of the said court of insolvency, in and for said county of Norfolk by virtue of the authority vested in me by the one hundred and fifty-seventh chapter of the Public Statutes and the Laws of said Commonwealth do hereby convey and assign to the said assignees all the joint and separate estate, real and personal of the said Gideon P. Brown, Edward Steese and Amasa Clarke, copartnership insolvent debtors,

including all the property of which they were possessed, or which they were interested in or entitled to on the twenty-third day of August in the year of our Lord one thousand eight hundred and eighty-nine excepting such as may be by law exempted from attachment, with all their joint & separate deeds, books and papers relating thereto.

To have and to hold all the above-granted premises to the said Wm. R. Dupee, Sam'l P. Colt and Weston Lewis assignees as aforesaid and their heirs, forever; in trust, nevertheless, for the uses and purposes, with the power and subject to the conditions and limitations set forth in the chapter and laws aforesaid.

37 In witness whereof, I, the said judge, have hereunto set my hand and caused the seal of said court to be affixed, on this fourth day of September in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of the Court of Insolvency.

(Endorsed:) Case No. 737. Assignment in the case of Brown, Steese & Clark, insolvent debtors. Recorded, vol. 4, page 84. True copy of record. Attest: John D. Cobb, assist. register.

38 COMMONWEALTH OF MASSACHUSETTS, } *ss.:*
Suffolk, }

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff, }
vs.
THE LIPPITT WOOLEN CO., D'f't. }

Agreed Statement of Facts.

In the above action it is agreed, upon information and belief and for the purposes of this suit, that the facts as stated and not denied in the pleadings herein are true, except that conclusions and inferences of law or effects thereof as stated on advice are not admitted.

It is further agreed that the statutes of said State of Rhode Island with regard to trustee process are as follows:

Public Statutes of Rhode Island.

CHAP. 207, SEC. 22. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands of any person, copartnership or corporation as trustee, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and the time of day of such service, with the person or some member of the copartnership named in such writ as trustee, or if such trustee or the corporation whose shares shall be directed to be attached shall be a bank, with the cashier thereof, if an insurance company, with the president or

secretary thereof, and if any other corporation, it shall be served by leaving an attested copy thereof at the manufactory where the person is employed whose wages are to be trusteed or at the usual place where the payment of said wages is made, upon the treasurer thereof or the person executing the duties of treasurer thereof or the agent or superintendent thereof, or at the office of such corporation
39 with some person there employed, and such officer shall also leave an attested copy of such writ so endorsed with the defendant or at his last and usual place of abode, or if he have none within the precinct of such officer, the latter shall send such copy to the defendant by mail, if his address is known to or can be ascertained by such officer.

CHAP. 212, SEC. 5. In case any action commenced by attachment of real estate or by foreign attachment shall not be answered and the defendant shall not return into this State before the return of the writ, the court shall continue the action one term, and the defendant shall have a right to answer the same six days previous to the term to which such action shall be continued, or may be permitted to answer the same on the first or second day of said term in like manner as is provided in *in* the preceding section.

SEC. 4. The defendant in a civil action appealed from the judgment of a justice court may file any plea or answer therein other than a plea of abatement on or before the second day of the term of the court at which such appeal is entered.

CHAP. 208, SEC. 1. In all attachments of real estate, or of goods and chattels, or of personal estate in the hands of a trustee, or of stock or shares in any banking association or other incorporated company, he who shall first procure any such attachment to be made for any just debt or damages shall be entitled to have his debt or damages satisfied before any other demand for which the same shall be attached or taken by execution at the suit of any other person, and all others in order of attachment.

SEC. 9. Whenever any banking association or incorporated company shall be served with a copy of a writ attaching its stock or shares, if a bank, the cashier thereof, if an insurance com-
40 pany, the president or secretary thereof, and if any other corporation, the treasurer thereof or person executing the duties of treasurer, shall render an account upon oath to the court to which such writ shall be returnable of what stock or shares the defendant had in such company at the time of the serving such writ.

SEC. 10. The person, member of the copartnership or officer of the corporation with whom a copy of a writ shall have been left for the purpose of attaching the person- estate of the defendant in the hands or possession of such person, copartnership or corporation, as trustee, shall render an account, in writing, upon oath to the court to which such writ is returnable, of what estate such person, copartnership or corporation had in his hands or possession at the time such writ was serve- if any, or if he had none either directly or indirectly, shall return such fact in writing under oath, to such court.

SEC. 11. The disclosure made by virtue of either of the two preceding sections shall be sworn to before any person authorized to

administer oaths and shall be filed with the clerk of the court, if there be a clerk, otherwise with the court to which such writ shall be returnable.

SEC. 12. Either party may examine the person so making oath, upon written interrogatories, to be filed with such clerk, or court, if there be no clerk, and such person, after having been furnished with a copy of such interrogatories, shall answer the same responsively in writing under oath administered as aforesaid, and shall return the answer to such clerk, or to such court, if there be no clerk, at such time as such court shall by general rule or by special order in such case direct.

41 SEC. 13. If it shall appear by the disclosure of the person making such oath that the person, copartnership or corporation served with a copy of such writ had at the time of service thereof any of the personal estate of the defendant in his or their hands, then and in such case the plaintiff, after having recovered judgment against such defendant, may bring his action against such person, copartnership or corporation to recover so much as will satisfy such judgment, with interest and costs, if there shall appear by such disclosure to be a sufficiency for the same, otherwise for so much as shall appear by the same to be in his hands.

SEC. 14. Whenever it shall appear that several persons, copartnerships or corporations had property of the defendants as such trustee, the plaintiff may sue each separately and recover the amount in his hands until such plaintiff shall receive full payment of his judgment against the original defendant, with interest and costs.

SEC. 15. Any trustee, after final judgment against the defendant may satisfy such judgment or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor, and such payment shall avail for his discharge, as against both plaintiff and defendant, for the amount thereof.

SEC. 16. If it shall appear by the disclosure that the personal estate in the hands of the trustee belonging to the defendant did not consist of money, but of one or more specific articles, such trustee may, after final judgment shall have been rendered against the defendant, surrender or deliver to the officer charged with the execution issued on such judgment such specific articles, that the same may be taken on such execution.

SEC. 17. Such surrender or delivery shall be a good discharge to the trustee for such articles, as to both plaintiff and defendant in the action.

42 SEC. 18. If any person, copartnership or corporation, after being served as trustee with a copy of any writ, and after having been tendered at the time of such service, two dollars and his travelling fees as a witness in the supreme court or court of common pleas, and one dollar and like travelling fees in any other court, shall refuse or neglect to render such an account on oath as aforesaid, of what personal estate of the defendant he had in his hands at the time of the service of such copy, such trustee shall be liable to satisfy the judgment that the plaintiff shall obtain against the de-

fendant in such writ, to be recovered by action on the case, except as provided in section twenty-two, chapter two hundred twenty-two.

SEC. 19. If several trustees shall neglect or refuse to render an account upon oath in the same case, then the plaintiff shall bring his action against all such trustees jointly, and in no other manner.

SEC. 20. Every person who shall be served with such copy of a writ against any defendant may file an answer to such action, and defend the suit in behalf and in the name of the defendant.

SEC. 21. If it shall appear by such disclosure that the person, copartnership or corporation who had been served as trustee with a copy of such writ had not any of the personal estate of the defendant in his hands, then such action shall be dismissed and the person who shall appear to defend the same shall recover his costs, unless the writ has been duly served on the defendant.

SEC. 22. Every person, copartnership or corporation served with a copy of a writ for attaching the estate of another in their hands shall be paid all lawful costs and charges which they shall incur in consequence of their being served with such writ of attachment by the person who brings the action, and so much of such charge
43 as shall be judged reasonable by the court before whom the cause shall be pending shall be allowed in the bill of costs.

SEC. 23. The word trustee, wherever occurring in this title shall be deemed to include the words attorney, agent, factor and debtor.

CHAP. 213, SEC. 10. Whenever any person shall be served with a copy of a writ by which he shall be sought to be charged as trustee of the defendant named therein and such person shall appear and answer to the action so commenced as to whether he is or is not a trustee of the defendant, the court in which such action is brought or may be pending shall determine whether the person so served is properly chargeable as the trustee of the defendant, and if chargeable, to what extent.

SEC. 11. Any person summoned as trustee of a defendant making a false answer or affidavit in any case or in any affidavit required of him or which he may take in any action, shall be liable to the plaintiff, in an action of the case, for any damages which may result to him from such false answer or affidavit.

CHAP. 222, SEC. 21. In every execution issued against any defendant in an action in which another person shall have been charged, as the trustee of such defendant, under the provisions of section ten of chapter two hundred thirteen, or by the default of the person served with a copy of the plaintiff's writ for the purpose of charging him as the trustee of the defendant to appear and file his affidavit therein, there shall be inserted next after the words "goods and chattels or real estate of the defendant," the words following, namely, "and the personal estate of the said defendant, in the hands and possession of (here insert the name of the trustee,) charged as trustee of the said defendant to the extent of (here insert the amount for which the trustee is charged)," or if the trustee shall be
44 charged by his default in not filing the necessary affidavit in said cause, insert in lieu of the clause fixing the extent to which such trustee shall be charged, the following, after the word

defendant, namely, "by the default of the said trustee to file his affidavit in said action."

SEC. 22. If any person named as the trustee of a defendant in any execution, who shall have had a judgment that he be charged as trustee rendered against him by default, shall make affidavit as to whether or not he had personal property of the defendant in his hands or possession at the time of the service of the original writ in said action upon him and stating the amount, if any, so in his hands, and that he failed to file an affidavit therein before he was charged by the court as the trustee of the defendant, either from want of actual notice of the service of the said writ, or by accident or mistake, and shall give such affidavit to the officer charged with the service of said execution, the officer shall annex such affidavit to his return to the said execution, and if the trustee shall pay to the said officer the money paid for his attendance at the time of the service of the original writ and another like sum, together with the sum stated in his affidavit to be so in his hands, if any, no further proceedings shall be had therein against such trustee, except as is provided in section eleven of chapter two hundred thirteen, and the officer shall pay the money paid to him by such trustee to the plaintiff.

Acts of 1884.

CHAP. 433, SEC. 1. Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate under an assignment or otherwise, may, on his own motion, become a party to the action so far as respects the title to said personal estate.

45 SEC. 2. The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable, but either party to the suit, or any claimant of the estate so attached, may allege and prove any facts not stated nor denied by said trustee that may be material in so deciding.

SEC. 3. Any question of fact arising upon such additional allegations may be tried and determined by the court or justice and in the court of common pleas and in the supreme court the same may be submitted to a jury in such manner as the court shall direct.

Acts of January, 1889.

CHAP. 752, SEC. 1. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands or possession of any person, copartnership, or corporation as trustee, the defendant may at any time after the service of such writ upon such trustee and before final judgment deliver to the officer who served such writ a bond in the penal sum of the amount of damages laid in the writ signed by the defendant or some one in his behalf, with sureties to the satisfaction of such officer with a condition therein that the same shall be null and void, if the final judgment in the action in which such writ was served shall be forthwith paid and satisfied after the rendition thereof.

SEC. 2. Upon the acceptance of such bond by such officer he shall forthwith deliver to the person, copartnership or corporation named as trustee in such writ a certified copy of the writ, with an endorsement thereon signed by said officer setting forth therein that he has accepted such bond and released the shares or personal estate in the hands or possession of such trustee from such attachment, and thereupon the shares or personal estate in the hands or possession of such trustee shall become discharged from such attach-
46 ment.

SEC. 3. In case such writ shall have been returned to the court to which it is made returnable and duly entered therein or in case the officer who served such writ shall from any cause be unable to perform the duties mentioned in section 2 of this act, then such bond shall be delivered to the clerk of the court to which such writ is made returnable, if there be a clerk, but if there be no clerk then to the justice thereof, and such clerk or justice shall proceed in the manner provided in sections 1 and 2 of this act.

SEC. 4. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.
H. L. BOUTWELL, *Att'y for Def't.*

Thereupon said agreed facts being presented to the court and seen and understood, on the twenty-third day of March, A. D. 1892, judgment is ordered thereon for the plaintiff.

Whereupon, on the twenty-fourth day of said March, 1892, the following is filed:

SUFFOLK, *ss:*

Superior Court, Mar. 23, 1892.

WILLIAM R. DUPEE ET ALi. (THEOPHILUS KING, by Amendment), Plaintiffs,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Agreement.

In the above-entitled action, in accordance with the direc-
47 tion of the court in ordering judgment that execution be stayed and the parties plaintiff and defendant file an agreement therefor, it is hereby agreed that execution shall not issue until all proceedings in the action referred to in the pleadings herein of John A. Cross *vs.* Brown, Steese & Clarke, now pending in the court of common pleas, in the county of Providence and State of Rhode Island and Providence Plantations, wherein this defendant has been summoned as alleged trustee, shall be finally determined.

CHARLES THORNTON DAVIS,
Att'y for Pl'ff.
H. L. BOUTWELL, *Att'y for Def't.*

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereto affixed.

Witness Albert Mason, Esquire, chief justice of our superior court, at Boston, in said county of Suffolk, this sixth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

Att.:

[L. S.] (S'g'd) JOS. A. WILLARD, *Clerk.*

48 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence County,* } *ss:*

Court of Common Pleas.

JOHN A. CROSS
v.
BROWN, STEESE & CLARKE; LIPPITT WOOLEN CO., Trustee. } No. 4867.

Trustee's Additional Affidavit.

I, Charles H. Merriman, of Barrington, in said county of Bristol, in said State of Rhode Island, on oath depose and say:

That I am treasurer of the Lippitt Woolen Co., summoned as alleged trustee in the above-entitled action, and was such on the 23rd day of August, 1889.

That since the affidavit filed herein by me on behalf of said Lippitt Woolen Co. the said company has sold certain goods to one Hiram Leonard, of Boston, in the Commonwealth of Massachusetts, whereby said Leonard became indebted to said company, alleged trustee herein, and that thereafter, to wit, on or about the twentieth day of April, 1891, without the knowledge or consent of this affiant or of this alleged trustee, an action was commenced against this alleged trustee by William R. Dupee, Weston Lewis, and Samuel P. Colt, as assignees in insolvency of said Brown, Steese & Clarke, defendants herein, by a writ sued out of the superior court within and for the county of Suffolk, in said Commonwealth, in which action trustee process was served upon said Leonard, and the said credits of this alleged trustee in the hands of said Leonard were garnished.

49 The contract and indebtedness sued on in said action was the same contract and indebtedness as that in respect of which this alleged trustee has been summoned in this action.

The plaintiffs in said action were assignees under proceedings in insolvency in the court of insolvency within and for the county of Norfolk, in said Commonwealth, of the estate of said Brown, Steese & Clarke, and claimed that by virtue of the assignment to them in said proceedings the said indebtedness due from this alleged trustee to said Brown, Steese & Clarke, as aforesaid, and all right of action therefor had ceased to be in said Brown, Steese & Clarke and was

then vested in said plaintiffs, as assignees, as aforesaid, and that this alleged trustee was no longer indebted to said Brown, Steese & Clarke or entitled to account to them therefor, but only to said plaintiffs.

This alleged trustee, in defence of its property so garnished, appeared and filed an answer in said action, setting up the fact of the pendency of this suit and all the material facts connected therewith and denying the said claim of the plaintiffs, a copy of which answer appears in the exhibit hereto annexed; to which answer the plaintiffs demurred, and upon hearing their said demurrer was overruled; and thereafterward, upon motion, Theophilus King, of Boston, in said Commonwealth, was substituted as plaintiff in said action, having purchased from the said Dupee, Lewis and Colt, as assignees, as aforesaid, and the said assignees having under the order and direction of said court of insolvency sold to said King all claim of said Brown, Steese & Clarke against said Lippitt Woolen Co., in accordance with the laws of said Commonwealth. Said King thereupon filed a replication in said action, setting forth more fully both the proceedings in this action and his claim that he was entitled notwithstanding, by virtue of said insolvency proceedings
50 and the said assignment and purchase in pursuance thereof, both in this action and in his said suit there pending, and at all events in that suit, to the said indebtedness of this alleged trustee, and the allegations of fact set forth in the pleadings therein being true to the best of its knowledge and belief this alleged trustee admitted the same, but denied the conclusions of law drawn therefrom and claimed by the said plaintiff, and further agreed to a transcription of the statutes of this State in relation to trustee process as being the laws hereof.

(S'g'd) CHAS. H. MERRIMAN.

Subscribed and sworn to, in the city of Providence, this 21st day of April, A. D. 1892, by said Charles H. Merriman, before me—

(S'g'd) FRANK HEALY,
Notary Public.

By the Public Statutes of said Commonwealth of Massachusetts it is provided:

CHAP. 157.

That an inhabitant of said State owing debts, contracted while such inhabitant, may apply by petition to the judge of the county within which he has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judge for the county within which he resides, setting forth his inability to pay all his debts, and his willingness to assign all his estates and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in chapter 157 of the Public Statutes.

If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than two hundred
51 dollars, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of his deputies, directing

him forthwith as messenger to take possession of all the estate real and personal of the debtor, except such as may be by law exempt from attachment, and of all his deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

When two or more persons who are partners become insolvent, a warrant may be issued as provided in this chapter, by the judge for the county in which either of the partners has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judges for the county within which he resides, upon the petition of one or more of the partners (reasonable notice being first given by the judge to the other partners, if within the State, to show cause why its prayer should not be granted) or upon the petition of a creditor of the partners; upon which warrant all the joint stock and property of the company and the separate estate of each of the partners shall be taken, except such parts as may be by law exempt from attachment.

The creditors shall, except as provided in section 41 of said chapter 157, choose one or more assignees of the estate of the debtor in the presence of the judge at the first meeting, the choice to be made by the greater part in value of the creditors who have proved their debts; but when the number of creditors present amounts to five and less than ten, the votes of two at least, and, when the number of creditors amounts to ten or more, the votes of three at least, shall be necessary for a choice, and no party or person having a preferred claim shall vote thereon, except so much of said claim as exceeds the amount preferred by law. If no choice is made by the creditors at said meeting, the judge shall appoint one or more
52 assignees. If an assignee so chosen or appointed fails within four days to express in writing his acceptance of the trust, the judge may fill the vacancy.

And by section 41 every election of an assignee shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election; or, if he deems that it will be for the interest of the parties concerned, he may at the first meeting appoint one or more disinterested persons to be assignee or assignees of the estate of the debtor, without any election by the creditors.

The judge shall, by an instrument under his hand, assign and convey all the estate real and personal of the debtor, except such as is by law exempt from attachment, and all his deeds, books, and papers relating thereto.

The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution upon a judgment against him, at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The

assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate.

If a debtor whose property is attached conveys before judgment and execution in the suit any part of such property, and
53 subsequently thereto, and before execution issues proceedings are commenced by or against him as an insolvent debtor, or if a dissolution of an attachment under the preceding section might prevent the property attached from passing to the assignee, the judge before whom proceedings in insolvency are pending, or the court to which the process of attachment is returnable, may, upon application made on or before the day of the third meeting of creditors by any person interested, and cause shown thereon, order the lien created by the attachment to continue. The action may be continued or execution stayed until the assignee is chosen and takes charge of the action. The assignee may proceed with the action and levy the execution at the cost and expense of the estate; and the amount recovered, exclusive of costs due to the original plaintiff, shall vest in the assignee.

He shall have the like remedy to recover all the estate, debts, and effects in his own name, as the debtor might have had if no assignment had been made. In suits prosecuted by the assignee, the assignment made by the judge shall be conclusive evidence of his authority to sue.

The assignee shall account for all the estate and effects of the debtor that vest in him by the assignment, at the appraisement, except as herein provided. He shall make no profit by the increase and sustain no loss by the decrease or destruction, without his fault, of any part of the estate; if he sells any thereof for more than the appraised value, he shall account for the excess, and, if he sells for less, he shall be allowed for the loss, if it appears to the court that the sale was expedient and for the interest of all concerned in the estate; and in either case the assignee shall exhibit to the court a true account of sales, and shall sell the estate at public auction unless the court for sufficient cause, upon petition therefor filed, otherwise orders.

54 He may, under the direction of the judge, submit any controversy arising in the settlement of demands against the estate or of debts due to it to the determination of arbitrators to be chosen by him and the other party to the controversy, and may under such direction compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

CHAP. 77, SEC. 12. Upon a promissory note payable on demand, a demand made at or before the expiration of sixty days from the date thereof shall be deemed to be made within a reasonable time; and any act, neglect, or other thing, which by the rules of law and the custom of merchants is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, shall, if it occurrs at or before

the expiration of said sixty days, be deemed a dishonor of such note, and shall authorize the holder thereof to give notice of the dishonor to the endorser, as upon a presentment to the promissor and his neglect or refusal to pay the same. A presentment of such note to the promissor and a demand of payment shall not charge the endorser, unless made on or before the last day of said term of sixty days.

SEC. 14. In an action on a promissory note payable on demand, brought by an endorsee against the promissor, any matter shall be deemed a legal defence which would be a defence to a suit on such note brought by the promisee, except that no matter arising after notice of the endorsement or transfer of such note has been given to the promissor shall constitute a defence.

55 Whereupon, upon hearing and consideration thereof, said court ordered judgment for the plaintiff in said action, thereby adjudging, as this affiant is advised, that this alleged trustee is no longer indebted or liable to said Brown, Steese & Clarke, the principal defendants in this action, but only to said King, and the plaintiff has duly taken judgment therein, and said judgment is still in full force and binding upon this alleged trustee, although execution thereon has been stayed to await the final adjudication of these proceedings.

A copy of the record of said suit, duly certified and authenticated, is hereto annexed and made a part hereof.

Wherefore this affiant, on behalf of said alleged trustee, submitting that it can in no event upon the foregoing facts be made twice liable or chargeable for this its single indebtedness, and submitting itself to the judgment of this honorable court thereon, prays that it may be discharged as trustee herein.

LIPPITT WOOLEN CO.,
(S'g'd) By CHAS. H. MERRIMAN, *Treasurer.*

56 (*Copy Answers of the Lippitt Woolen Company to Interrogatories Filed on Behalf of Plaintiff. Filed June* 24, 1893.)

PROVIDENCE, *sc:*

Court of Common Pleas.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } Law. 4867.

Interrogatories in behalf of the plaintiff to the Lippitt Woolen Co. as trustee in the above-entitled cause.

1. Have you since the service of the writ upon you in this case made any special deposit of the amount disclosed by your original affidavit as due from you to the defendant; if so, when and where did you make such deposit and has such deposit remained to the present time; if not, when and how has it been changed from time to time and where is it now?

2. Have you always since said service upon you kept said sum so due from you to the defendants separate and apart from your other moneys; if so, when did you so set it apart and how and where?

3. Have you not sometimes since such service upon you used said sum of money in your business in the same or like manner as if such service had not been made upon you?

And if you say that you have not, explain fully how your use of it has been changed in consequence of such service upon you.

57 State fully where said money was at the time of such service upon you, how and where invested or deposited, and how, when, and where from time to time to the present time such investment or deposit has been changed.

4. Who in fact personally retained, employed, or requested Mr. H. L. Boutwell to appear and act for you in the case against you in the superior court for Suffolk county, Massachusetts, referred to in your supplemental affidavit filed in said case?

5. Was such retainer, employment, or request originally authorized or has it since been ratified and adopted by you; if so, when and how?

6. Please state what communication- by letter or telegraph have passed between you or any office- of yours and said Boutwell or any other person respecting said case in said superior court or respecting the alleged attachment therein, either before or after said attachment was made, and annex to your answer to this interrogatory full copies of all such communications, letters, and telegrams sent or received by you in any way referring to the same.

7. If the communications or any of them between you or any officer of yours and said Boutwell or any other person respecting said last-named case or attachment, either before or after the commencement of the same, were verbal, state the same or the substance of the same and each of them fully, and state when, where, and with whom the same respectively were had or took place.

8. Have you paid or agreed to pay said Boutwell anything for his services in said case; if so, when, where, and how and how much?

9. Have you or either of your officers any agreement or understanding with any person or persons whomsoever respecting your being called upon or not being called upon to pay the judg-

58 ment in said case or any part of it? If so, state fully such agreement or understanding and when and where and with whom made or had.

And if in writing or evidenced by any writing, either letter or other writing, annex to your answer full copies of the same.

(S'g'd) JAMES TILLINGHAST,
Pl'ff's Attorney.

59 PROVIDENCE, *sc:*

Court of Common Pleas.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK.

Answers of the Lippitt Woolen Company, Alleged Trustee in the Above-entitled Cause, to Interrogatories Filed on Behalf of the Plaintiff.

Answer to interrogatory 1. No. This company never made any such deposit.

Answer to interrogatory 2. No; it was never so set apart.

Answer to interrogatory 3. It is impossible to state. This company has used all its money as it chose from time to time without any distinction. At the time of the service of the writ in this case upon this company its moneys were in various banks and individuals' hands, and has fluctuated in amount from time to time since then, according to the necessities of its business.

Answer to interrogatory 4. I do not know who personally retained Mr. Boutwell. I left the matter of defending that suit and retaining counsel in Boston entirely in the hands of the counsel for the company here, Mr. Roelker.

Answer to interrogatory 5. This question is answered by my answer to number 4.

60 Answer to interrogatory 6. Copies of all correspondence between our counsel here and Mr. Boutwell are hereto annexed and made part of this answer.

Answer to interrogatory 7. There were no such verbal communications.

Answer to interrogatory 8. Made no special agreement with Mr. Boutwell about his services, but expect to pay him a reasonable sum; have not yet received any bill.

Answer to interrogatory 9. This affiant is advised that this interrogatory is immaterial, irrelevant, and incompetent, and for these and other reasons need not be answered, but this alleged trustee being willing that all the facts should be known, but unwilling that its right to a discharge should be prejudiced by the appearance of unnecessary matters, without waiver of its objection that the same is immaterial and irrelevant as aforesaid and insisting thereon, says: There is the stipulation which appears in the record of judgment, a duly authenticated copy of which is annexed to and made a part of the supplemental affidavit of this alleged trustee. Further, this alleged trustee is advised that, as a matter of law, the plaintiff in the judgment, having submitted to the jurisdiction of this court, will, if his standing be sustained, be bound by its decision, whatever that decision may be and notwithstanding his said judgment, although he may be entitled to a reversal of that decision, if adverse, upon appeal or writ of error to our supreme court or to the Supreme Court of the United States, brought either in his own name and behalf or as of right in his own behalf,

but in the name and with the consent of this alleged trustee, upon properly indemnifying this alleged trustee against all the
61 expense and costs of the prosecution of such an appeal, writ of error, or other method of retrial, and that this alleged trustee, for its own protection in the premises, would equally be entitled and in duty bound to seek such retrial and reversal. Besides, this alleged trustee is assured by that plaintiff or his attorneys that he believes and contends that, whether this alleged trustee is now or ever was chargeable herein, properly depends upon the decision of Federal questions, and that upon these Federal questions he is entitled to prevail as against the plaintiff in these garnishment proceedings, or at least that this alleged trustee would on such questions be entitled to a discharge, but that if the plaintiff in said judgment and this alleged trustee are wrong in this belief and contention, and it shall be so decided by the court of final resort, then in that event said plaintiff will not, even if he could, enforce any double liability against this alleged trustee, and to the foregoing effect there is an understanding between the parties not in writing nor expressly formulated in terms nor otherwise than morally obligatory.

This alleged trustee, further answering this and interrogatories 4, 5, 6, and 7, says that counsel for the plaintiff herein was informed by this alleged trustee, solicitous for its own protection, of the institution of the suit in Massachusetts against this alleged trustee, and asked how it affected him, who replied, "Not in the slightest." Nevertheless, for the protection of its property which had been attached in Massachusetts, without its knowledge and consent and for its own protection against the possibility of being subjected to a double liability, this alleged trustee deemed it pertinent and advisable to appear and defend to that end and to the end that these garnishment proceedings might be fully set up by them. This alleged trustee never sought to prevent the assignee of the claim from
62 properly raising or presenting any Federal question he might desire, nor does he now so seek, but, on the contrary, two States having claimed jurisdiction over the same subject-matter or *res*, to wit, the debt of this alleged trustee of this State to the principal citizens and residents of Massachusetts, this alleged trustee submits that for its protection it was and is necessary that such Federal questions should be properly raised and presented and settled, if necessary, by the commonalty of all the States on questions of conflict of jurisdiction.

This alleged trustee, further answering, is informed that James B. Case, representing a bank creditor of said defendants not parties to any of the litigation herein referred to, but interested in the joint and equal distribution of the estate of said Brown, Steese and Clarke to and among its creditors, and to that end desirous not only that all its assets should be collected, but also that all the legal rights of that estate should be preserved by submission of all the questions involved to all pertinent jurisdictions, and being also considerate of the hardship which would be imposed upon this alleged trustee should a double liability arise from conflict of jurisdictions, entered into a stipulation with a stockholder of this alleged trustee, one

R. L. Lippitt, not then an officer, a copy of which is hereunto annexed, the purport of which was in accordance with the understanding aforesaid, to indemnify this alleged trustee in a certain sum of money in the event that the legal rights of the plaintiff herein and the plaintiff in said judgment in Massachusetts should result in the double liability of this alleged trustee, without relief or remedy in this court or any courts of the United States; which stipulation, however, was not between any of the parties to any of said litigation; and the obligors insist that as conditions of any liability
63 on his or their part under the same every lawful objection to the charging of this alleged trustee shall be availed of by this alleged trustee in this court and in any Federal court wherein a retrial or review, if charged, may be obtained. Further than this neither this alleged trustee nor any officer of it has any agreement or understanding with any person or persons whomsoever that it shall or that it shall not be called upon to pay the said judgment in Massachusetts or any part of it.

LIPPITT WOOLEN CO.,
(S'g'd) By CHAS. H. MERRIMAN, *Treasurer.*

PROVIDENCE, *ss:*

Subscribed and sworn to this 23rd day of June, A. D. 1893, by Charles H. Merriman, treasurer of the Lippitt Woolen Company, before me—

(S'g'd) FRANK HEALY,
Notary Public.

64 OCT. 19, 1891.

H. A. Boutwell, Esq.

DEAR SIR: We are counsel for the Lippitt Woolen Company here, and they have requested us to inquire of you just how the case against them stands in your court, wherein you appear for them, and also to request you to keep us posted as to its progress.

Yours truly, MINER AND ROELKER,
By HEALY.

MARCH 9, 1892.

H. L. Boutwell, Esq., Lippitt Woolen Co.

DEAR SIR: Enclosed please find agreed statement of facts and answer to amended declaration, which please sign and file in the papers in the case in court.

Yours truly, W. G. ROELKER,
By HEALY.

65 BOSTON, MASS., *October* 20, 1891.

Miner & Roelker, Esqrs., 31 Market Sq., Providence, R. I.

DEAR SIRS: Your favor inquiring about suit of Dupree *v.* Lippitt Woolen Co. is at hand. The case is No. 4361 and now pending in the superior court for Suffolk county. Def't's answer was filed in

due season. To that the plaintiffs filed a demurrer. After a hearing upon demurrer Judge Bishop overruled the demurrer. This was subsequently reargued, but as yet no change has been made, and the entry stands "demurrer overruled." The case has not yet been put upon the trial list.

Yours truly, H. L. BOUTWELL.

66 Know all men: That I, James B. Case of Weston in the Commonwealth of Massachusetts, am firmly bound unto Robert Lincoln Lippitt of the city and county of Providence and State of Rhode Island in the sum of twenty thousand dollars, to be paid to s-id Robert Lincoln Lippitt, his heirs, executors, administrators or assigns, to which payment I bind myself my heirs, executors and administrators.

Sealed with my seal and dated this first day of June, A. D. 1891.

The condition of the above obligation is such that

Whereas the Lippitt Woolen Company, a corporation legally created under the laws of the State of Rhode Island and located and doing business in said city of Providence was on the 13th day of August, A. D. 1889, served with garnishee process issuing out of the court of common pleas within and for the county of Providence and State of Rhode Island in an action wherein one John A. Cross of said Providence is plaintiff and Gideon P. Brown, Edward Steese and Amasa Clarke, all citizens of said Commonwealth of Massachusetts, copartners as Brown, Steese & Clarke, are defendants and hath made and filed its answer therein as garnishee admitting and setting forth its indebtedness to said Brown, Steese & Clarke of $11,938.39 in money and 357 wool sacks, and

Whereas the said Lippitt Woolen Company hath also been sued in an action issuing out of the superior court within and for Suffolk county and Commonwealth of Massachusetts as garnishee, wherein William R. Dupee and others are plaintiffs and said Lippitt Woolen Company is defendant and hath filed its answer therein disclosing and admitting that it is indebted to said Brown, Steese & Clarke in the amount of $11,938.39, and three hundred and fifty-seven wool sacks, now if the above-bound James B. Case, his heirs, exec-

67 utors, or administrators, shall pay or cause to be paid to the said Lippitt Woolen Company, its successors or assigns any and all sums of money which it shall hereafter be called upon to pay and pay over and above one payment of said sum of $11,938.39, and the value of said 357 wool sacks for or by reason of any judgment or decree of any court whatsoever together with any and all sums of money expended by it for counsel fees or other legal expenses or costs of any court in any litigation connected with the said matters then this obligation to be void, otherwise to be and remain in full force and effect.

JAMES B. CASE. [SEAL.]

Signed, sealed, and delivered in presence of—

T. KING.

68 (*Copy of Amendment to Answer of Lippitt Woolen Company. Allowed Filed—Rogers, J.—January* 27, 1894.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence County,* } ss:

Supreme Court, Common Pleas Division.

JOHN A. CROSS
v.
BROWN, STEESE & CLARK; LIPPITT WOOLEN COMPANY, Trustee. } No. 4867.

Amendment to trustee's affidavit.

I, Charles H. Merriman, of Providence, in said county of Providence, on oath depose and say:

First. That I am treasurer of the Lippitt Woolen Company, summoned as alleged trustee in the above-entitled action, and was such on the 23rd of August, 1889.

Second. That the indebtedness of $11,938.39 of this alleged trustee to the principal defendant, as to which this alleged trustee has been summoned in this action, is an indebtedness resulting from the sale of certain wool by the defendants to this alleged trustee made by the defendants, all of whom were citizens of Massachusetts, and having their only place of business in that State at Boston, in said State of Massachusetts, where all of said wool was delivered and where the said $11,938.39, the contract price thereof, was to be paid, and the said indebtedness, although fixed and definite, had not at the time of service of process in this action upon this alleged trustee become by the terms of said sale, either in whole or in any part, payable, nor did any part of the same become payable until September 12, 1889.

69 Third. Referring to my original affidavit, filed herein December 6, 1889, in which I answered that there was in the hands and possession of the said Lippitt Woolen Company, as the trustee of said defendants, the said sum of $11,938.39 and certain wool sacks, I further say that at the time of filing said original affidavit the claim of the adverse claimant, Theophilus King, to said sum was not known to this alleged trustee and was not meant to be anticipated by said affidavit, and many of the facts set forth in said claim as filed in this action did not then exist, especially the suit and judgment against this alleged trustee in Massachusetts, and the description of this alleged trustee in said original affidavit as "the trustee of said defendants" was not meant to carry any conclusion of law or admission of its liability to be charged in this action, so as to preclude a consideration of the facts afterward alleged or appearing in said action, or any contingency which ought, especially for the protection of this alleged trustee, to be taken into account in determining the question as to whether or not, and in what amount, this alleged trustee shall be charged, if at all.

(S'g'd) CHAS. H. MERRIMAN.

PROVIDENCE, *sc:*

In the city of Providence, this 8th day of January, A. D. 1894, subscribed and sworn to by said Charles H. Merriman before me—

(S'g'd) FRANK HEALY,
Notary Public.

70 (*Copy of Plaintiff's Interrogatories to the Lippitt Woolen Co. Filed February 3, 1894, at 9.10 a. m.*)

PROVIDENCE, *sc:*

Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE AND CLARKE. } No. 4867.

Interrogatories in behalf of the plaintiff to the Lippitt Woolen Company.

1. Did you make your last supplemental affidavit, filed January, 1894, upon your own original motion or at the request or suggestion of some other person, and of what other person?

And if you say that the suggestion came to you through your local counsel please inquire and state from whom, naming the person, the original request or suggestion to make the same came to him.

2. Who, in fact, prepared the original draft of this your said last supplemental affidavit? And if such original draft was presented to your local counsel please inquire and state who presented the same to him.

3. Who is it agreed or understood is to pay, or, if paid by you in the first instance, is to eventually reimburse you for your expenses and counsel fees incurred in respect of this your present supplemental affidavit?

(S'g'd) JAMES TILLINGHAST,
Plaintiff's Attorney,
By WM. R. T.

71 (*Copy of Answers of Lippitt Woolen Co. to Plaintiff's Interrogatories. Filed February 3, 1894. Filed February 13, 1894.*)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. }

Answers of the Lippitt Woolen Co.

Answer to interrogatory number one. I made the last supplemental affidavit at the suggestion of my counsel, Mr. Roelker. His

attention had been called to the co-dition of the disclosures, as I am informed, by Mr. Coombs, who, in the hearings, was representing certain parties in interest among them and in the absence of their respective counsel, being, as I am also informed, certain of the alleged trustees; and upon a certain ruling being made by the court, which took him somewhat by surprise, he suggested to the court that all of the alleged trustees should be notified, so that if they had any desire to amend or supplement their disclosures, in view of the ruling, they should have an opportunity. The court thereupon, at Mr. Coombs' request, granted a continuance; and the attention of our counsel was called, through Mr. Coombs, to the facts aforesaid and to the condition of the disclosures, in respect of which the supplemental affidavit was made.

Answer to interrogatory number two. As I am informed, Mr. Coombs, at the time he caused Mr. Roelker's attention to be called to the ruling of the court and the condition of the disclosures, also sent to him a draft of such further disclosure as he thought would cover certain criticisms which he made upon the disclosure as it then stood. The supplemental affidavit as filed, however,
72 differs from said original draft somewhat, as I am informed.

Answer to interrogatory number three. I have no special understanding with reference to the matter of expenses as connected with said supplemental affidavit.

(S'g'd) CHAS. H. MERRIMAN.

PROVIDENCE, *sc:*

Subscribed and sworn to, in the city of Providence, this 13th day of February, A. D. 1894, by Charles H. Merriman, before me—

(S'g'd) FRANK HEALY,
Notary Public.

73 (*Copy of Motion to Intervene, T. King. Filed March* 16, 1892.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *ss:*
Providence County,

Court of Common Pleas.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } No. 4867.

Motion to intervene.

And now comes Theophilus King, of Quincy, in the Commonwealth of Massachusetts, claiming title by contract of purchase from William R. Dupee, Weston Lewis, and Samuel P. Colt, as they are assignees in insolvency, under appointment by the court of insolvency within and for the county of Norfolk and Commonwealth aforesaid, of the insolvent estates of said several defendants, as hereinafter more fully set forth, to all the personal estate of said defend-

ants in the hands of the Wanskuck Co. and the Lippit Woolen Co., alleged trustees by attachment on trustee process in the above-entitled action, and moves that he may become a party to said action so far as respects the title to said personal estate, and may recover and receive the same should said alleged trustee- not be discharged in said process, and may be heard as to the charging of the said alleged trustees therein.

And said King says that he claims said personal estate under assignment as follows:

That the laws of said Commonwealth of Massachusetts in relation to insolvent debtors provide (Public Statutes, chapter 157, to which and to all laws of said Commonwealth amendatory thereof this claimant craves leave to refer and makes a part hereof)
74 that an inhabitant of said State owing debts, contracted while such inhabitant, may apply by petition to the judge of the county within which he has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judge for the county within which he resides, setting forth his inability to pay all his debts and his willingness to assign all his estates and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in chapter 157 of the Public Statutes.

If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than two hundred dollars, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of his deputies, directing him forthwith as messenger to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from attachment, and of all his deeds, books of account, and papers and keep the same safely until the appointment of an assignee.

When two or more persons who are partners become insolvent, a warrant may be issued, as provided in this chapter, by the judge for the county in which either of the partners has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judge for the county within which he resides, upon the petition of one or more of the partners (reasonable notice being first given by the judge to the other partners, if within the State, to show cause why its prayer should not be granted) or upon the petition of a creditor of the partners, upon which warrant all the joint stock and property of the company and the separate estate of each of the partners shall be taken, except such parts as may be by law exempt from
75 attachment.

The creditors shall, except as provided in section 41 of said chapter 157, choose one or more assignees of the estate of the debtor in the presence of the judge at the first meeting, the choice to be made by the greater part in value of the creditors who have proved their debts; but when the number of creditors present amounts to five and less than ten the votes of two at least, and when the number of creditors amounts to ten or more the votes of three at least, shall be necessary for a choice, and no party or person having a preferred

claim shall vote thereon except on so much of said claim as exceeds the amount preferred by law. If no choice is made by the creditors at said meeting, the judge shall appoint one or more assignees. If an assignee so chosen or appointed fails within four days to express in writing his acceptance of the trust, the judge may fill the vacancy.

And by section 41 every election of an assignee shall be subject to the approval of the judge, and when, in his judgment, it is for any cause needful or expedient he may appoint additional assignees or order a new election, or, if he deems that it will be for the interest of the parties concerned, he may at the first meeting appoint one or more disinterested persons to be assignee or assignees of the estate of the debtor without any election by the creditors.

The judge shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the debtor, except such as is by law exempt from attachment, and all his deeds, books, and papers relating thereto.

The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully
76 sold, assigned, or conveyed or which might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate.

He shall have the like remedy to recover all the estate, debts, and effects in his own name as the debtor might have had if no assignment had been made. In suits prosecuted by the assignee the assignment made by the judge shall be conclusive evidence of his authority to sue.

The assignee shall account for all the estate and effects of the debtor that vest in him by the assignment at the appraisement except as herein provided. He shall make no profit by the increase and sustain no loss by the decrease or destruction, without his fault, of any part of the estate; if he sells any thereof for more than the appraised value, he shall account for the excess, and if he sells for less he shall be allowed for the loss, if it appears to the court that the sale was expedient and for the interest of all concerned in the estate; and in either case the assignee shall exhibit to the court a true account of sales, and shall sell the estate at public
77 auction unless the court for sufficient cause, upon petition therefor filed, otherwise orders.

He may, under the direction of the judge, submit any controversy arising in the settlement of demands against the estate or of debts due to it to the determination of arbitrators to be chosen

by him and the other party to the controversy, and may, under such direction, compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

And that by virtue of and in accordance with the statutes of said Commonwealth therefor providing, as appears by the records of said court of insolvency, said Edward Steese and Amasa Clarke, members of said firm of Brown, Steese & Clarke, becoming insolvent, filed a petition in said court of insolvency within and for said county of Norfolk and Commonwealth of Massachusetts, in which county both said Steese and said Clarke had resided for more than three consecutive months theretofore, praying that said firm of Brown, Steese & Clarke might be adjudged insolvent, and that the estates of said insolvent debtors might be seized and distributed according to law; that reasonable notice was duly given by the judge to said Brown, who on the 23d day of August appeared and assented thereto and submitted himself to the jurisdiction of said court; that on the 21st day of August, 1889, as appears by said records of said court, and upon hearing and inquiry by the court as provided by law, as aforesaid, and a finding of all pertinent facts requisite in the premises, said firm and the members thereof were adjudged insolvent debtors under the aforesaid laws, and a warrant in insolvency issued from said court against the joint and several estate of said
78 Brown, Steese & Clarke, the first publication of the notice of issuing thereof being made on the 23d day of August, 1889, and on the 4th day of September, 1889, said Dupee, Lewis, and Colt were duly elected and appointed assignees in insolvency in said case; that on the said 4th day of September, 1889, the judge of said court of insolvency, by an instrument under his hand, as provided by the laws of said Commonwealth of Massachusetts in that behalf, as aforesaid, assigned and conveyed to said Dupee, Lewis, and Colt, as assignees, as aforesaid, all the estate, real and personal, of said debtors and each of them, except such as is by law exempt from attachment, and all their deeds, books, and papers relating thereto, which assignment vested in said assignees all the property of said debtors and each of them, real and personal, which they or either of them could have lawfully sold, assigned, or conveyed or which might have been taken on execution upon a judgment against them or either of them at the time of the first publication of the notice of the issuing of said warrant, and all debts due to the debtors or either of them or any persons for their use, and all their rights of action for goods or estate, real or personal.

And that said assignees, under the direction and order of said court of insolvency, on or about the 19th day of November, 1890, sold to this claimant the claim of said firm of Brown, Steese & Clarke against said Wauskuck Co. and Lippit Woolen Co., alleged trustees in this action.

That the personal estate of said firm which the plaintiff in this action seeks to attach in the hands of the alleged trustees is indebtedness of said alleged trustees to said firm for wool purchased of it by them; that said firm was composed of Gideon P. Brown, Edward

Steese, and Amasa Clarke, all of whom were citizens of said
79 Commonwealth of Massachusetts, and that said firm was located and carried on business at Boston, in said Commonwealth, and had no place of business whatever elsewhere; that the contracts for said purchases of wool were made in said Commonwealth and with reference to the laws thereof and were there to be performed and the purchase price (whereof said indebtedness so sought to be attached, as aforesaid, is the balance remaining due) was there payable, to wit, at said Boston; that said court of insolvency acquired in its proceedings personal jurisdiction of all of said debtors, defendants in the above-entitled action, before said defendants entered their appearance in this suit.

That said court, by virtue of the laws of said Commonwealth in relation to insolvent debtors and the nature of the personal estate of said defendants in the hands of said alleged trustees, as aforesaid, also acquired jurisdiction of said personal estate.

That by virtue of the judicial findings and acts of said court, as aforesaid, the indebtedness due from these alleged trustees to the said firm of Brown, Steese & Clarke and all rights of action therefor ceased to be in said Brown, Steese & Clarke and were vested in said assignees and passed by said sale from said assignees to this claimant, and said alleged trustees were no longer indebted to said Brown, Steese & Clarke or entitled to account to them therefor, but only to this claimant.

This claimant says that said insolvent laws of Massachusetts are public acts of said Commonwealth, and that it is provided in and by said laws that the assignment by the judge to the assignee shall be effectual, subject to the provisions of section 47 of chapter 157 of the Public Statutes to dissolve any attachment on mesne
80 process made not more than four months prior to the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings; and by said section 47, if a debtor whose property is attached conveys before judgment and execution in the suit any part of such property and subsequently thereto and before execution issues proceedings are commenced by or against him as an insolvent debtor, or if a dissolution of an attachment under the preceding section might prevent the property attached from passing to the assignee, the judge before whom proceedings in insolvency are pending or the court to which the process of attachment is returnable may, upon application made on or before the day of the third meeting of creditors by any person interested, and cause shown thereon, order the lien created by the attachment to continue. The action may be continued or execution stayed until the assignee is chosen and takes charge of the action. The assignee may proceed with the action and levy the execution at the cost and expense of the estate, and the amount recovered, exclusive of costs due to the original plaintiff, shall vest in the assignee.

Wherefore this claimant, setting forth the judicial proceedings of said court of insolvency, as hereinbefore set forth, and the assignment of the estates of said insolvent debtors made in pursuance thereof within four months of all attachments in this case, as afore-

said, offers to make proof of the same, in accordance with the laws of the United States in that behalf, and asks that full faith and credit be given thereto in this honorable court, with the effect to dissolve any lien of attachment in behalf of the plaintiff herein upon said personal estate of the defendant in the hands of said alleged trustees.

81 This claimant, on advice, avers further that under the provisions and practical operation of the laws of the State of Rhode Island all attachments on mesne process of property belonging to a resident or land-owner in said State may be dissolved by the making of an assignment within sixty days from the date of such attachment by said resident or land-owner of all his property in said State to an assignee, citizen of said State of Rhode Island, in trust for the benefit of his creditors.

And the plaintiff says that also, in other respects and particulars, it appears in the laws and practice of the State of Rhode Island that the policy of said State and that of the Commonwealth of Massachusetts are substantially alike and in accord in securing an equal, *pro rata* distribution of the estate of insolvents to and among their creditors and in defeating and avoiding all preferences and priorities under attachment on mesne process or otherwise.

And this claimant further says that in the Constitution of the United States, article 4, section 2, it is established that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States;" and this claimant, claiming the benefit of said provision in said Constitution, says that said Brown, Steese & Clarke were all of them citizens of the United States and of the Commonwealth of Massachusetts, and as such and being insolvent were, with all their firm and individual assets, subject to the operation of the insolvent laws of Massachusetts and could not make valid voluntary assignments in violation thereof, nor secure such assignments otherwise than by and through the proceedings instituted by them in insolvency, as aforesaid, and that neither

82 of them was a citizen or resident of or held or owned any real estate in said State of Rhode Island, nor could they secure an assignment of their assets solely to a citizen or citizens of Rhode Island, but the same were assigned in said proceedings to one citizen of said State and to two citizens of Massachusetts, which assignment was made and said trust thereof accepted prior to the expiration of sixty days from the date of the service of the trustee process in this suit.

And this claimant, referring to said insolvency proceedings and annexing a copy of the petition of the debtors and of the adjudication thereon and the warrant issued thereon and of the assignment of the assets of said insolvents to the assignees therein hereto and making all the same a part hereof, claim that all attachments in this suit were also dissolved under and by virtue of the laws of Rhode Island in said provisions thereof which secure a privilege, immunity, and tenure of property to citizens, residents, and land-owners to dissolve attachments by mesne process upon and to effect an equal, *pro rata* distribution of their assets by assignments to citizens

of said State, which privilege, immunity, and tenure, alike of the assignor and assignee in said assignments, this claimant claims pertain also to the citizens of the several States under the Constitution of the United States aforesaid.

This claimant further says that no service was ever obtained upon said firm of Brown, Steese & Clarke or any member thereof in this action, nor was any appearance for them or any of them entered herein until after the assignment of their assets in said insolvency proceedings aforesaid.

And this claimant, relying upon said insolvent laws and said proceedings in insolvency in said court of insolvency as a
83 court of record and said assignment as a judicial proceeding, also claims full benefit and protection of article 4, section 1, of the Constitution of the United States and the laws of the United States made in pursuance thereof, which article and section provide "that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings in every other State," and that this State and the courts thereof are thereby bound to recognize said assignment, with effect to vest all the assets of said insolvents in this State in said assignees free from said alleged attachments in this suit.

This claimant also pleads and relies upon article 6 of the Constitution of the United States, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution and laws of any State to the contrary notwithstanding."

And this claimant further says that by a certain contract or agreement made under the order and direction of the court of insolvency within and for the county of Norfolk this claimant purchased and acquired from the assignees in insolvency of said Brown, Steese & Clarke all the property and assets formerly belonging to said firm, and promised and guaranteed said assignees therefor such sum as should be necessary to pay certain expenses incurred and ten per cent. upon all claim- allowed by said court of insolvency in said proceedings against said insolvent estates, whereby this claimant acquired an active interest in and claim upon all property of said Brown, Steese & Clarke, and all claims, funds, or choses in action to them belonging or pertaining, and stands in the place of
84 said Brown, Steese & Clarke, entitled to all rights, remedies, and defences which they could have in these or any other proceedings or by virtue of said laws.

This claimant, referring to the instruments sued on in this case, alleged as promissory notes, show- that the same are dated respectively April 9th and May 7th, 1889.

And that the contracts therein contained were made in Boston, in the Commonwealth of Massachusetts, and by the express tenor of said instruments were to be performed at the place of business of the International Trust Company in said Boston. Wherefore said contracts are governed wholly by the laws of said Commonwealth of Massachusetts.

That by the laws of said Commonwealth (Public Statutes of Massachusetts, chapter 77, section 12) it is not contemplated, as this claimant is advised, that such instruments shall be negotiable for more than sixty days from their dates, or that such instruments shall be endorsed as negotiable paper after the expiration of sixty days from their dates, or that title in or to the same or the benefit of the obligation thereof shall be assigned and transferred after said period by endorsement merely, so as to authorize suit thereon in the name of any such alleged assignee or transferee, and that by Public Statutes of said Commonwealth, chapter 77, section 14, it is expressly provided that—

"In an action on a promissory note payable on demand, brought by an endorsee against the promissor, any matter shall be deemed a legal defence which would be a defence to a suit on such note brought by the promisee, except that no matter arising after notice of the endorsement or transfer of such note has been given to the promissor shall constitute a defence."

To which chapter of said Public Statutes this claimant begs
85 leave to refer and to make a part hereof.

And this claimant, without admitting that said Cross is a *bona fide* holder of said instruments or that said International Trust Company is not still the true owner thereof, says that said International Trust Company held said instruments, together with the collateral therein recited, without endorsing or transferring the same until long after the expiration of sixty days from their respective dates and until after said firm of Brown, Steese & Clarke had become insolvent and committed acts of insolvency and were subject to proceedings under the insolvency laws of said Commonwealth, which proceedings were duly instituted as aforesaid, and in which said Steese & Clarke, two of the members of said firm, have secured their discharges from all liability provable against them or said firm in said proceedings.

This claimant further says that said International Trust Co. held both of said alleged notes and all said collateral for more than sixty days from the dates of said notes respectively; that said firm of Brown, Steese & Clarke stopped payment on or about September 5th, 1889, on the night of which day said Gideon P. Brown, because of the financial difficulties of his said firm, left said city of Boston on his way out of this country, to which he did not return for many months; that on or about September 7th, 1889, the probable embarrassment of said firm had been published in said Boston and brought to the notice of said trust Co., after which, and on or about the same date, said International Trust Co. separated each of said alleged notes from the collateral recited in them respectively, and, endorsing said alleged notes, transferred or purported to transfer the same to said Cross, who brought his said suit thereon.

86 Whereby, and by the laws governing said instruments, all actions upon said instruments instituted by said International Trust Company at the time of any alleged transfer thereof to said Cross would be defeated as against said Steese & Clarke and all attachments of the property of said firm vacated.

This claimant further shows that said instruments purport upon their faces to be amply secured by pledges of the negotiable obligations of third persons as collateral security for the payment thereof or any other indebtedness of said defendants to said International Trust Company, but to none other, and on information and belief says that said International Trust Company held other collateral for the payment of other indebtedness by said defendants to it, with like power to apply the proceeds of such other collateral to the payment of these instruments, and that said International Trust Company has become a party to said insolvency proceedings in Massachusetts and has therein rendered an account, wherein it charges itself with proceeds of the sale of the collateral to the instrument herein sued on, dated April 9, 1889, to the amount of eight thousand one hundred and twenty-two dollars and seventy cents, and still proves for a deficit of indebtedness of said firm to itself, on which it has secured large dividends from said Dupee, Lewis, and Colt, assignees as aforesaid; and this claimant says that the collateral to said instrument herein sued on, dated May 7, 1889, amounted at its face to the same sum as the obligation thereby secured, and such collateral has since been paid in full.

And this claimant further says that said Cross did not begin
87 and is not prosecuting said suit for himself as a *bona fide* domestic creditor of said Brown, Steese & Clarke in this action, but colorably only for the benefit of said International Trust Company.

Of all which facts — all rights, equities, and duties arising therefrom, as they then existed and were or might be thereafterwards exercised or enforced, said plaintiff at the time he acquired any interest in said instrument knew, or, as this claimant is informed, had sufficient notice to put him on such inquiry as would have discovered the same.

Wherefore this claimant claims that the promises in said instruments are to be performed only in the place of business of said International Trust Company and where an accounting may be had with it, and are enforcib*el* only in proceedings wherein the court has jurisdiction of said International Trust Company; that said instruments are not in law or equity separable from the security thereof; that at least $28,122.70, proceeds and collection of said collateral already received, should be credited on account thereof; that purporting to be endorsed by the International Trust Company, as well as secured by collateral, any holder thereof should exhaust any special fund or trust to which he may resort before proceeding even by competition with general creditors against the common fund of said insolvent defendant's estate, and that said obligations, being governed by the laws of said Commonwealth of Massachusetts, and for other reasons, as aforesaid and otherwise, will no longer sustain their action or entitle*d* the plaintiff to withhold any property herein attached from this claimant.

(S'g'd) By his att'y, CHARLES THORNTON DAVIS.

88 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } 88:

Court of Insolvency.

I, George White, Esquire, judge of the court of insolvency within and for the county of Norfolk, hereby certify that Jonathan Cobb, whose signature is affixed to the annexed certificate, is the register and proper certifying officer of said court, and has by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord eighteen hundred and ninety two.

(S'g'd) GEORGE WHITE,
Judge of the Court of Insolvency.

89 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } 88:

[L. S.] Court of Insolvency.

I, Jonathan Cobb, register of the court of insolvency for said county of Norfolk, having, by law, the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, hereby certify the following papers hereto annexed to be true copies of papers appertaining to said court on file and of record in the office of said court.

In witness whereof I have hereunto set my hand and the seal of said court this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

[L. S.] (S'g'd) JONATHAN COBB, *Register.*

90 To the honorable the judge of the court of insolvency in and for the county of Norfolk, in the Commonwealth of Massachusetts:

Respectfully represent Edward Steese and Amasa Clarke, both of Brookline, in the county of Norfolk, that they and Gideon P. Brown, of Boston, in the county of Suffolk, constitute the firm of Brown, Steese and Clarke, doing business in said Boston; that they are inhabitants of this State, and that the said Steese and Clarke have been residents of said county of Norfolk for upwards of three months next preceding the date of this petition, and that said firm and all the individual members thereof are indebted in divers sums of money, amounting in the whole to not less than two hundred dollars each, contracted while such inhabitants, which they and each of them and said firm are unable to pay in full, and they, the petitioners, wish to surrender all their joint and separate property for the benefit of their joint and separate creditors and to obtain a discharge from their said joint and separate debts according to the statutes in this behalf provided.

Wherefore they pray that a warrant may be issued for taking possession of the joint estate of said firm and of the separate estate of its several members, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD STEESE.
AMASA CLARKE.

NORFOLK, *ss*:

AUG. 10, 1889.

Then personally appeared the above-named Edward Steese and Amasa Clarke and severally made solemn oath that the
91 statements contained in the foregoing petition by them subscribed are true, before me—

M. F. DICKINSON, JR.,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss*:

DEDHAM, *August* 21, 1889.

The foregoing petition having been duly considered, and it appearing to the satisfaction of the court that the statements therein contained are true, it is ordered that a warrant thereon be issued.

GEORGE WHITE,
Judge of the Court of Insolvency.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss*:

[L. S.] Court of Insolvency.

On the foregoing petition it is ordered that a copy of the said petition and of this order thereon be served personally on the said Gideon P. Brown, of Boston, in the county of Suffolk, or left at his last and usual place of abode forthwith, that he may appear before the court of insolvency, to be holden at Dedham, in and for said county of Norfolk, on the twenty-first day of August current at ten o'clock in the forenoon, then and there to show cause, if any he has, why the prayer of the said petition should not be granted.

Witness George White, Esquire, judge of said court, and the seal thereof this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JONATHAN COBB, *Register.*

92 (Endorsed:) Case No. 737. Debtor's petition and citation in the case of Brown, Steese & Clarke, insolvent debtors. Filed August 12, 1889. Warrant returnable —— 18. Aug. 12, cit. issued. Ret. Aug. 21, 1889. From the office of M. F. Dickinson, Jr., Equitable building, Boston, Mass. True copy. Attest: John D. Cobb, assist. register.

SUFFOLK, *ss:*

BOSTON, *August* 14*th*, 1889.

I this day served the within petition and order therein on the within-named Gideon P. Brown by leaving an attested copy thereof at his last and usual place of abode for his appearance at court as within directed.

FRED H. SEAVEY,
Deputy Sheriff.

Service	.50
Copy	1.50
Travel to serve	.40
" to return	.80
	$3.20

93 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] To the sheriff of said county of Norfolk or either of his deputies, Greeting:

You are hereby directed forthwith as messenger to take possession of all the joint and separate estate, real and personal, of Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, and Gideon P. Brown, of Boston, in the county of Suffolk, copartners, doing business in said Boston under the firm name of Brown, Steese and Clarke, insolvent debtors, except such as may be by law exempt from attachment, and of all their joint and separate deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice, inside, in the newspaper called the Boston Daily Advertiser, printed at Boston, in the county of Suffolk, the first publication to be made forthwith, and to send written notice by mail or otherwise within five days after the date hereof to said debtors and to all the creditors upon the schedule of their creditors, to be furnished you by them within three days after the date hereof; which notice shall state:

First. That this warrant has issued against the estate of said debtors.

Second. That the payment of any debts and the delivery of any property belonging to said debtors to them or for their use and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of the debtors to prove their debts and choose one or more assignees of their estate will be held at the court of insolvency, to be holden at Dedham, in said county of Norfolk, on the first Wednesday of September next,
91 at ten o'clock in the forenoon.

And have you there this warrant, with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, at Dedham, this

twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of Court of Insolvency.

95 (No fees will be allowed under Nos. 4 and 5 unless specifically stated.)

Officer's Return.

NORFOLK, *ss:*

SEPTEMBER 3D, A. D. 1889.

By virtue of the within warrant I have taken possession of all the estate of the within-named insolvent debtor-, except such as is by law exempted from attachment, and of all their deeds, books of account, and papers which have come to my knowledge, and I have published notice by advertisement on two different days, inside, in the newspapers within mentioned, the first publication of which was on the twenty-third day of August, A. D. 1889.

I also, within five days after the date of the within warrant, sent written notice, as within directed, to the within-named debtors and to the creditors named on the schedule herewith returned and delivered to me by said debtors on the twenty-third day of August, A. D. 1889, and all of said notices were according to the directions set out in said warrant.

Fees.

1. Service of warrant	$2.00
2. Necessary travel (at the rate of 4 cents a mile)	9.60
3. Notice to creditors (at 10 cents each)	15.50
4. Actual expenses in publishing notices as follows:	
Paid Daily Advertiser	3.00
Postage	3.00
5. Actual expenses in custody of property and in other services as follows:	
Cash paid keepers, 14 days	42.00
Custody of property, 14 days	14.00
	$91.10

HOWARD COLBURN,
Deputy Sheriff, Messenger.

96 NORFOLK, *ss:*

SEPT. 4, A. D. 1889.

Then personally appeared the said Howard Colburn and made oath that the above expenses returned by him under Nos. 4 and 5 have been actually incurred and paid by him, and are just and reasonable, before me—

JOHN D. COBB,
Justice of the Peace.

(Endorsed:) Case No. 737. Warrant. In the case of Brown, Steese & Clarke, insolvent debtors. Date, August 21, 1889. Return-

able, 1st Weds., Sept., 1889. First publication, August 23, 1889. True copy. Attest: John D. Cobb, assist. register.

97 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] Court of Insolvency.

In the case of Gideon P. Brown, of Boston, in the county of Suffolk, and Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, doing business in said Boston under the firm name of Brown, Steese & Clarke, copartners, insolvent debtors.

Know all men by these presents: that whereas William R. Dupee of Newton in said Massachusetts, Samuel P. Colt of Providence in the State of Rhode Island and Weston Lewis of Boston in said Massachusetts, have been duly appointed assignees in said case;

Now, therefore, I, George White, Esquire, judge of the court of insolvency, in and for said county of Norfolk, by virtue of the authority vested in me by the one hundred and fifty-seventh chapter of the Public Statutes and the laws of said Commonwealth, do hereby convey and assign to the said assignees all the joint and separate estate, real and personal, of the said Gideon P. Brown, Edward Steese and Amasa Clarke, copartnership, insolvent debtors, including all the property of which they were possessed, or which they were interested in or entitled to on the twenty-third day of August in the year of our Lord one thousand eight hundred and eighty-nine, excepting such as may be by law exempted from attachment, with all their joint and separate deeds, books and papers relating thereto.

To have and to hold, all the above-granted premises to the said Wm. R. Dupee, Sam'l P. Colt & Weston Lewis, assignees as aforesaid and their heirs, forever; in trust nevertheless, for the uses and purposes, with the powers and subject to the conditions and
98 limitations set forth in the chapter and laws aforesaid.

In witness whereof, I, the said judge, have hereunto set my hand and caused the seal of said court to be affixed, on this fourth day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of the Court of Insolvency.

(Endorsed:) Case No. 737. Assignment. In the case of Brown, Steese & Clarke, insolvent debtors. Recorded, vol. 4, page 84. True copy of record. Attest: John D. Cobb, assist. register.

99 Charles Thornton Davis, attorney and counsellor at law, 54 Devonshire street.

BOSTON, *Mar.* 15, 1892.

Geo. E. Webster, Esq., clerk.

DEAR SIR: Please file the enclosed in Cross *vs.* Brown, Steese & Clarke. It is to take the place of the one now on file by arrange-

ment made on Saturday, & the hearing on Apr. 9 will be upon this copy. The motion of Bullens & Sawyer remains as it is.

Very truly yours,

(S'g'd) C. T. DAVIS.

100 (*Copy of Amendment to King Petition to Intervene. Filed May 7, 1892.*)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *ss:*

Court of Common Pleas.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } 4867.

Amendment to petition by Theo. King to intervene as adverse claimant.

On page 7, immediately before the last sentence in the first paragraph (which commences, "That said court"), the claimant moves to insert the following:

"And, further, that said indebtedness, though absolute, was not yet due and payable at the time of any service of process upon an alleged trustee in this action, the time at which said purchase price was under the terms of said contract payable not having then arrived."

(S'g'd) By his attorney, C. T. DAVIS.

101 (*Copy of Motion of T. King to Amend Petition to Intervene. Filed March 6, 1893.*)

PROVIDENCE, *sc:*

Court of Common Pleas, December Term, 1892.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

In re Theophilus King's motion to intervene.

Motion to amend.

And now comes the said Theophilus King and moves for leave to amend his motion to intervene in the above-entitled action by adding thereto the following allegations:

And this claimant further says that on or about the 20th day of April, A. D. 1891, a suit was commenced against the said Lippitt Woolen Company in the superior court within and for the county of Suffolk and Commonwealth of Massachusetts, wherein the said William R. Dupee, Weston Lewis, and Samuel P. Colt, as assignees, were named plaintiffs, the said Lippitt Woolen Company, principal

defendant, and one Hiram Leonard, a debtor of said Lippitt Woolen Company, was summoned as supposed trustee of said Lippitt Woolen Company.

Afterwards, on March 1, 1892, the writ and declaration in said action were on motion duly amended, naming the said Theophilus King as plaintiff in place of said William R. Dupee, Weston Lewis, and Samuel P. Colt assignees, and setting forth in the writ the fact of sale and purchase by the plaintiff, the said Theophilus
102 King, so as to make the suit conform to section 109 of said chapter 157 of the Public Statutes of Massachusetts, which section provides as follows: "Suits upon claims sold by assignees shall be brought in the name of the purchasers. The fact of sale and of purchase by the plaintiff shall be set forth in the writ, and the defendant may avail himself of any matter of defense of which he could have availed himself in a suit upon the claim by the assignee. Costs in such suits shall be recovered by or against the plaintiff, and the assignee shall not be liable therefor."

The contract and indebtedness sued on in said suit was the same contract and indebtedness as that in respect of which the said Lippitt Woolen Company has been summoned as alleged trustee in this action.

The said Lippitt Woolen Company appeared in said suit and answered, setting up in its said answer the garnishment proceedings against it in this action and claiming that by virtue of the laws of Rhode Island and his attachment thereunder the said Cross had a lien on said debt of said Lippitt Woolen Company to said Brown, Steese & Clarke, and that the assignment by the judge of the said court of insolvency could not and therefore did not transfer to and vest in the said assignees or the said King, as plaintiff, the said debt. On the said answer and on the plaintiff the said King's replication to said answer, and on an agreed statement of the facts, including the pertinent laws of Rhode Island and of Massachusetts, the said Theophilus King recovered judgment against the said Lippitt Woolen Company on its obligation under said contract, a duly authenticated copy of which judgment, record, and proceedings is hereto annexed and made a part hereof.

(S'g'd) By his att'ys, JOHN C. COOMBS AND
CHAS. THORNTON DAVIS.

103 [L. S.] COMMONWEALTH OF MASSACHUSETTS:

I, Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk, and hath the keeping of the files, records, and proceedings of said court within and for said county, and of the late superior court of the county of Suffolk aforesaid; that he is by law the proper person to make out and to certify copies of the files, records, and proceedings of said several courts; that full faith and credit are and ought to be given to his acts and attestations done, as aforesaid, and that his attesta-

tion to the papers hereunto annexed, being numbered 1 to 56, inclusive, of the files, records, and proceedings of the said superior court, is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this 3rd day of March, in the year of our Lord one thousand eight hundred and ninety-three.

(S'g'd) ALBERT MASON,
Chief Justice of the Superior Court.

104 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court for the said county of Suffolk it is thus contained, the following being the entire record in the case:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

[L. S.] To the sheriffs of our several counties or their deputies, Greeting:

We command you to attach the goods or estate of the Lippitt Woolen Co., a corporation organized under the laws of the State of Rhode Island and having a usual place of business in Providence, in said State, to the value of fifteen thousand dollars, and summon the said defendant (if it may be found in your precinct) to appear before our justices of our superior court, to be holden at Boston, within and for our said county of Suffolk, on the first Monday of May next, then and there in our said court to answer unto William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of said Providence, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Brown, Steese and Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk, in an action of contract.

And the plaintiffs say that they are assignees in insolvency of the estates of Gideon P. Brown, of Boston, in said
105 county; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings within and for said county of Norfolk, and that the defendant owes the plaintiffs the sum of eleven thousand nine hundred and thirty-eight and $\frac{39}{100}$ — ($11,938.39) for goods sold to the defendant by said insolvents, an account whereof is hereto annexed, with interest thereon from the first day of November, 1889.

Account Annexed.

The Lippitt Woolen Co. to Wm. R. Dupee, Sam'l P. Colt, and Weston Lewis, assignees, Dr.

1889.			
July 12.	To 3 bales No. 2 Oregon fleece wool		$269.23
	" carting		.54
	July 12, 60 days,		
Aug. 6.	" 45 bales No. 2 Oregon fleece wool		4,214.21
	" carting		8.10
	Sept. 1, 60 days,		
" "	" 101 bags Territory fleece wool		7,269.40
	" carting		8.08
	Aug. 1, 60 days,		
" "	" 3 bags Territory fleece wool		179.17
	" carting		.38
			$11,949.11
" "	By credit allowance		10.72
			$11,938.39

106 To the damage of the said plaintiffs (as they say) the sum of fifteen thousand dollars, which shall then and there be made to appear with other due damages; and whereas the said plaintiffs say that the said defendant has not in its own hands and possession goods and estate to the value of fifteen thousand dollars aforesaid which can be come at to be attached, but has intrusted to and deposited in the hands and possession of Hiram Leonard & Co., trustee of the said defendant, goods, effects, and credits to the said value, we command you, therefore, that you summon the said supposed trustee (if he may be found in your precinct) to appear before our justices of our said court, to be holden as aforesaid, to show cause, if any he has, why execution to be issued upon such judgment as the said plaintiff may recover against the said defendant in this action (if any) should not issue against its goods, effects, or credits in the hands and possession of the said trustee.

And have you there this writ with your doings therein.

Witness Albert Mason, Esquire, at Boston, the twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JOS. A. WILLARD, *Clerk.*

On which writ are the following returns by the officer who served the same:

SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

By virtue hereof I this day, at 10 minutes past one o'clock

p. m., summoned the within-named trustee, Hiram Leonard, to appear and show cause at court, as within directed, by delivering to him in hand an attested copy of this writ.

FRED H. SEAVEY,
Deputy Sheriff.

Summons & tr.....	.58
Copy.....	1.00
	1.58

107 SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

The within-named defendant, The Lippitt Woolen Co., not being incorporated under the laws of this Commonwealth and having no place of business, officer, agent, or attorney therein known to me as such and duly accredited within my precinct, I could make no service upon it.

FRED H. SEAVEY,
Deputy Sheriff.

On said first Monday of May, A. D. 1891, the plaintiffs appeared, by C. T. Davis, Esquire, their attorney, and entered the above action, and no answer having been filed therein by the said Hiram Leonard, trustee, at the expiration of ten days from said first Monday, as required by law, a default was thereupon entered against him on the fifteenth day of said May.

And on the sixteenth day of said May the following order was entered by the court, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court, April Sitting, A. D. 1891.

William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of Providence, in the State of Rhode Island, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Browne, Steese & Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk, pl'ffs, *vs.* The Lippitt Woolen Co., a corporation organized under the laws of said State of Rhode Island and having a usual place of business in Providence, in said State, def't,
108 and Hiram Leonard, doing business and having a usual place of business in said Boston, under the name of Leonard & Co., supposed trustee.

This is an action of contract to recover fifteen thousand dollars alleged to be due to the plaintiffs from the defendant corporation on the twentieth day of April, 1891, as set forth in the plaintiffs' writ of that date.

And it appearing to the court by the suggestion of the plaintiffs and on inspection of the officer's return on the plaintiffs' writ that the defendant corporation is not of this Commonwealth nor was therein at the time of the service of said writ, and that it has no tenant, agent, or attorney in this Commonwealth known to the plaintiffs or to said officer, and that no personal service of said writ has been made upon the defendant corporation—

It is ordered by the court here that the plaintiffs give notice by serving it with a true and attested copy of this order fourteen days at least before the first Monday of June, 1891, that it may then and there appear and show cause why judgment in the above-entitled action should not be rendered against it, and that this action be continued to the next sitting of the court, and so from sitting to sitting until notice shall have been given to the defendant corporation agreeably to this order.

DANIEL W. BULLARD, *Ass't Clerk.*

And afterwards, during said sitting, to wit, on the fifth day of June, in said year, the following appearance in writing was entered, to wit:

SUFFOLK, *ss:*

Superior Court, April Sitting, 1891.

WILLIAM R. DUPEE ET AL., Pl'ff-,
v.
LIPPITT WOOLEN CO. & TR., D'f't.

109 In the above action I appear for defendant.

H. L. BOUTWELL,
209 *Washington St., Boston.*

Also on said last-named day the following was filed:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, } *ss:*

Superior Court.

WILLIAM R. DUPEE ET ALS.
vs.
THE LIPPITT WOOLEN CO. & TR.

Defendant's Answer.

And now comes the defendant in the above-entitled cause and answering says that it admits the correctness of the account annexed in the plaintiffs' declaration, and that it admits indebtedness to said Brown, Steese & Clarke to the amount of $11,938.39, as therein set forth.

And this defendant, further answering, says that on the 13th day of August, 1889, at 2.18 o'clock in the afternoon, at Providence, in the State of Rhode Island, being indebted, as aforesaid, it was served

with garnishee process issuing out of the court of common pleas within and for the county of Providence and said State of Rhode Island in an action of contract, wherein one John A. Cross, of said Providence, is plaintiff and said Brown, Steese & Clarke are defendants, which action is still pending in said court, and (1889?)* in said action this defendant, on the 6th day of December, filed its answer as garnishee, admitting and setting forth its said indebtedness to said Brown, Steese & Clarke of $11,938.39, and on the 20th day of March, 1890, a verdict in said suit of Cross *vs.* Brown, Steese & Clarke & Trustees was rendered for the plaintiff in the sum of $41,534.27, and subsequently a motion in arrest of
110 judgment and interrogatories to garnishees other than this defendant were filed and said action continued *nisi* without this defendant having as yet been charged as garnishee therein or motion therefor made or judgment therefor rendered, all of which appears by the records of said court.

And this defendant is informed and believes, and therefore avers, that prior to the date of service upon it of said process in said suit of Cross *vs.* Brown, Steese and Clarke & Trustees, to wit, on August 12, 1889, this defendant being indebted as aforesaid, Edward Steese and Amasa Clarke, members of said firm of Brown, Steese and Clarke, filed a petition in the court of insolvency within and for the county of Norfolk, in this Commonwealth, praying that said firm of Brown, Steese and Clarke might be declared insolvent, publication of the notice of the filing of which petition was made on the early morning of August 23, 1889, and that on the 21st day of said August a warrant in insolvency issued from said court against the joint and several estate of said Brown, Steese and Clarke, and that on the 4th day of September, 1889, the plaintiffs were duly elected and appointed assignees in insolvency, and that the judge of said court of insolvency, by an instrument under his hand, purported to assign and convey to the plaintiffs as assignees, as aforesaid, all the estate, real and personal, of said debtors, except such as is by law exempt from attachment, and all their deeds, books, and papers relating thereto; all of which appears by the records of said court of insolvency; that said firm was composed of Gideon P. Brown, Edward Steese, and Amasa Clarke, all of whom were citizens of said Commonwealth of Massachusetts, and which firm was located and carried on business in Boston, in said Commonwealth, and had no place of business whatever elsewhere. But this defendant is advised that on the foregoing facts and by virtue of the laws of said State of Rhode Island and
111 his attachment thereunder the said Cross has a lien on said debt of this defendant to said Brown, Steese and Clarke; and this defendant is further advised, and therefore avers, that on the foregoing facts the said assignment made by the judge of the said court of insolvency, as aforesaid, could not and therefore did not transfer to and vest in the plaintiffs, as assignees, as aforesaid, the

[* In pencil in copy.]

said debt of this defendant, this defendant being a citizen and resident of said State of Rhode Island.

And this defendant, further answering, says that it owes said amount, as aforesaid, and is ready and willing to pay the same to whomsoever it lawfully may on order of court, provided and whenever it may do so without the liability of being twice compelled to pay the same debt, and further says not.

LIPPITT WOOLEN CO.,
[CORPORATE SEAL.] By CHAS. H. MERRIMAN, *Treasurer.*

And on the eighth day of said June the following was filed:

SUFFOLK, *ss:*

Superior Court, June 5, 1891.

WILLIAM R. DUPEE & ALS., Assignees,
vs.
LIPPITT WOOLEN COMPANY.

Plaintiffs' Demurrer.

And now come the plaintiffs in the above-entitled action and demur to the defendant's answer filed therein, specially assigning as cause for demurrer that the answer does not disclose a legal defence.

By their attorney, CHARLES THORNTON DAVIS.

112 And on the eighteenth day of said June said order of notice was returned into court with the following thereon:

PROVIDENCE, R. I., *May* 16, 1891.

I, Franklin B. Ham, hereby certify that I have served a true and attested copy of the within notice this day on the Lippitt Woolen Company by leaving the same in the office of said company in the hands of Charles H. Merriman, the treasurer thereof.

FRANKLIN B. HAM,
Deputy Sheriff.

Fees, 2.80.

Subscribed and sworn to, in the city of Providence, the 16th day of May, A. D. 1891, before me—

[L. S.] FRANK HEALY,
Notary Public.

Thence the same was continued to the July sitting, 1891, and at a hearing, on the seventh day of July last aforesaid, it was ordered by the court that said demurrer be overruled. Thereupon, on the fourteenth day of said July, the plaintiffs filed the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court.

WM. R. DUPEE ET ALS.
vs.
THE LIPPITT WOOLEN CO. & TR.

Plaintiffs' Motion for Rehearing and Argument on the Question of the Plaintiffs' Demurrer to the Defendant's Answer.

And now come the plaintiffs and say that at the hearing on the demurrer of the plaintiffs to the defendant's answer in the above-entitled cause counsel retained by the plaintiff-, and who was expected to take part in said argument, was absent through failure to get notice seasonably of the time set for said hearing, and that there were considerations which said counsel
113 desired to submit and of which the counsel who argued the same were not sufficiently informed and which the plaintiffs' counsel believe are of controlling weight in said case, and that the plaintiffs have reasonable cause to fear that they would be deprived of the benefit to which they should be entitled on a judgment in their favor if such judgment should be delayed for the determination of said question by the supreme court.

Wherefore the plaintiffs move this honorable court for a rehearing and argument on the question of the plaintiffs' demurrer to the defendant's answer, and that the decision overruling said demurrer may be reversed, and that judgment for the plaintiff- may be entered in said action.

CHARLES THORNTON DAVIS,
Attorney for Pl'ff-.

And afterwards, during said sitting, to wit, on the eighth day of August, in said year, after a hearing it was ordered by the court that said motion for rehearing on question of demurrer be overruled.

Thence the same was continued to the October sitting, 1891, and thence to the present January sitting, 1892.

And now, on the first day of March, 1892, the plaintiffs file the following, to wit:

SUFFOLK, *ss:*

Superior Court, Feb. 23rd, 1892.

WILLIAM R. DUPEE ET ALS.
vs.
LIPPITT WOOLEN CO.

Motion to Amend.

And now come the plaintiffs in the above-entitled action and move for leave to amend their writ and declaration therein

114 by naming as party plaintiff, in the place of these present plaintiffs, Theophilus King, of Quincy, in the county of Norfolk, and by setting in said writ the following:

"The said King having purchased from William R. Dupee, Weston Lewis, and Samuel P. Colt, assignees of the joint and several estates of Gideon P. Brown, Edward Steese, and Amasa Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and said assignees having, under the direction and order of the court of insolvency, sold to said King all claim of said insolvents against said Lippitt Woolen Co."

And by further amending the declaration by inserting in place of the first six lines thereof the following:

"And the plaintiff says that he has purchased from William R. Dupee, Weston Lewis, and Samuel P. Colt, assignees in insolvency of the joint and several estates of Gideon P. Brown, of Boston, in the county of Suffolk; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and that said assignees, under the order and direction of said court of insolvency, have sold to him all right, title, and interest of the said Dupee, Lewis, and Colt, as assignees, as aforesaid, in and to all accounts payable shown by the books of the firm of Brown, Steese and Clarke as due said firm and in and to all claims or choses in action, including the claim herein sued on, which the said insolvents had or which the said Dupee, Lewis, or Colt had, as assignees, as aforesaid, against the defendant, and that the defendant owes the plaintiff the."

By their attorney, CHARLES THORNTON DAVIS.

115 Which said amendment was allowed; and on the tenth day of said March the defendant files the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Plaintiff,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Answer to Amended Declaration.

And now comes the defendant in the above-entitled action, and for answer to the amended declaration therein filed repeats its former answer filed herein, referring to and making the same a part hereof.

By its attorney, H. L. BOUTWELL.

Also on said last-named day the plaintiffs file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff,
vs.
THE LIPPITT WOOLEN CO., D'f't.

Plaintiff's Replication.

And now comes Theophilus King, plaintiff in the above-entitled action, and admits and says that the matters of fact set forth in the defendant's answer are true, but denies the conclusions of law or the effect thereof therein alleged on advice. The plaintiff further says that the indebtedness of said defendant to said Brown, Steese &
Clarke was contracted on a sale or sales of wool made by said
116 firm to the defendant at the place of business of said firm, in
Boston, Massachusetts, and all of said wool was there delivered to the defendant, and payment therefor was to be made at the office of said firm, in said city of Boston.

Copies of the alleged notes sued on by said Cross in Rhode Island in the action wherein the defendant was summoned as alleged trustee are hereto annexed, marked A and B, and made a part hereof, whereby it appears and the plaintiff says that said alleged notes were made to and were payable only at the banking-house of the International Trust Company, in said Boston, which trust Co. is a corporation established under the laws of said Commonwealth and has its principal and only place of business in said Boston, and that payment of said alleged notes was secured by the pledge to said International Trust Co. of the collateral recited in each.

The plaintiff further says that said International Trust Co. held both of said alleged notes and all said collateral for more than sixty days from the dates of said notes respectively; that said firm of Brown, Steese & Clarke stopped payment on or about Sept. 5th, 1889, on the night of which day said Gideon P. Brown, because of the financial difficulties of his said firm, left said city of Boston on his way out of this country, to which he did not return for many months; that on or about Sept. 7th, 1889, the probable embarrassment of said firm had been publicly rumored and published in said Boston and brought to the notice of said trust Co., after which and on or about the same date said International Trust Co. separated each of said alleged notes from the collateral recited in them respectively, and, endorsing said alleged notes, transferred or purported to transfer the same to said Cross, who brought his said suit thereon.

117 That said International Trust Co. at the time of said alleged transfer to said Cross held many and other obligations of said firm of Brown, Steese & Clarke in the form of instruments of the same

tenor as said alleged notes, except as to dates, amounts, periods of maturity, and the recitals of collateral, but payment whereof was secured by pledges held with like alleged powers for the application of the proceeds thereof, as is set forth in said alleged notes; of all of which facts, equities, and duties arising therefrom as they then existed or might arise said Cross knew, or, the plaintiff says on information and belief, had sufficient notice to put him on such enquiry as would have discovered the same.

That said International Trust Co. has realized large sums, proceeds of said collateral to said other obligations, and from the collateral pledged with and for the payment of said alleged notes sued on by said Cross said International Trust Co. has already received over twenty-eight thousand dollars; that said International Trust Co. said *
has made proof of certain of its obligations of said firm of Brown, Steese & Clarke or alleged balances thereof to the amount of many thousands of dollars in said insolvency proceedings of said firm, and has received full dividends of said estate thereon, and that said Steese & said Clarke have received their full discharges in said proceedings from all claims provable against them or said firm in the premises.

The plaintiff further says that by the laws of the State of Rhode Island in relation to insolvent debtors (Public Statutes R. I., chap. 237, sec. 12), herein referred to and made a part hereof, it is provided that:

"Whenever the property of any debtor shall be attached or levied upon by any creditor, the debtor may at any time before such property shall be sold and the proceeds thereof applied to the payment of the claim or judgment upon which such attachment or levy
118 shall have been made, and within sixty days after such attachment or levy, dis-olve such attachment or levy by making and having recorded in the records of the town or city where the assignor resides or where any of the real estateof such debtor is located, an assignment of all the property and estate of such debtor, except so much thereof other than debts secured by bills of exchange or negotiable promissory notes as is or shall be exempt from attachment by statutes of the State and of the United States, to some citizen of the State of Rhode Island, for the equal benefit of all his creditors in proportion to their respective claims, except as is provided in sec. 14 of said chap. 237, and such assignment shall be effectual to convey all the property and estate of such debtor, except as aforesaid."

That section 14 of said chapter, also referred to and made a part hereof, is as follows:

"No assignment hereafter made for the benefit of creditors shall give to any one creditor any preference over the claims of any other creditor, except the creditor be the United States or the State of Rhode Island, or for the wages of labor performed within six months previous to such assignment, not exceeding one hundred dollars to

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[* In pencil in copy.]

any one person: Provided, however, that the expenses of executing the assignment shall first be paid out of the estate."

And the plaintiff says that also in other respects and particulars it appears in the laws and practice of said State of Rhode Island that the policy of said State and that of the Commonwealth of Massachusetts are substantially alike and in accord in securing an equal *pro rata* distribution of the estate of insolvents to and among their creditors, and in defeating and avoiding all preferences and priorities under attachment on mesne process or otherwise.

119 And the plaintiff further says that in the Constitution of the United States, article 4, section 2, it is established that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and the plaintiff, claiming the benefit of said provision in said Constitution, says that said Brown, Steese & Clarke were all of them citizens of the United States and of the Commonwealth of Massachusetts, and as such, and being insolvent, were, with all their firm and individual assets, subject to the operation of the insolvent laws of Massachusetts, and could not make valid voluntary assignments in violation thereof nor secure such assignments otherwise than by and through the proceedings instituted by them in insolvency, as aforesaid, and that neither of them was a citizen or resident of or held or owned any real estate in said State of Rhode Island; nor could they secure an assignment of their assets solely to a citizen or citizens of [Rhode Island, but the same omitted*
were assigned in said proceedings to one citizen of] said State and to two citizens of Massachusetts, which assignment was made and said trust thereof accepted prior to the expiration of sixty days from the date of the service of said trustee process on said Lippitt Woolen Co. in the case of said Cross aforesaid.

And the plaintiff, referring to said insolvency proceedings, and annexing a copy of the petition of the debtors and of the adjudication thereon, and the warrant issued thereon, and of the assignment of the assets of said insolvents to the assignees therein hereto, and making all the same a part hereof, claim- that all attachments in said suit of said Cross aforesaid were also dissolved under and by virtue of the laws of Rhode Island in said provisions thereof which secure a privilege, immunity, and tenure of property to citizens, residents, and land-owners to dissolve attachments by mesne pro-

120 cess upon and to effect an equal *pro rata* distribution of their assets by assignments to citizens of said State, which privilege, immunity, and tenure, alike of the assignor and assignee in said assignments, the plaintiff claims pertains also to the citizens of the several States under the Constitution of the United States aforesaid.

The plaintiff further says that no service was ever obtained upon said firm of Brown, Steese & Clarke or any member thereof in said suit of said Cross, nor was any appearance for them or any of them entered in said suit until after the assignment of their assets in said insolvency proceedings aforesaid. And the plaintiff, relying upon

[*In pencil in copy.]

said insolvent laws and said proceedings in insolvency in said court of insolvency as a court of record and said assignment as a judicial proceeding, also claims full benefit and protection of article 4, section 1, of the Constitution of the United States and the laws of the United States made in pursuance thereof, which article and section provide "that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State," and that said State of Rhode Island and the courts thereof are thereby bound to recognize said assignment, with effect to vest all the assets of said insolvents in said State in said assignees free from said alleged attachments in said suit of said Cross.

The plaintiff also pleads and relies upon article 6 of the Constitution of the United States, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

And the plaintiff further says that by a certain contract or agreement made under the order and direction of the court of insol-
121 vency within and for the county of Norfolk the plaintiff purchased and acquired from the assignees in insolvency of said Brown, Steese & Clarke all the property and assets formerly belonging to said firm and promised and guaranteed said assignees therefor such sum as should be necessary to pay certain expenses incurred and ten per cent. upon all claim allowed by said court of insolvency in said proceedings against said insolvent estates; whereby the plaintiff acquired an active interest in and claim upon all property of said Brown, Steese & Clarke, and all claims, funds, or choses in action to them belonging or pertaining, and stands in the place of said Brown, Steese & Clarke, entitled to all rights, remedies, and defences which they could have in them or any other proceedings in this Commonwealth or by virtue of the laws thereof, or elsewhere.

And the plaintiff further says that the laws of said State of Rhode Island provide (Acts of 1884, chap. 433) that—

"Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate, under an assignment or otherwise, may on his own motion become a party to the action so far as respects the title in said personal estate.

The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable, but either party to the suit, or any claimant to the estate so attached, may allege and prove any facts not stated or denied by said trustee that may be material in so deciding."

And that by virtue thereof he has filed a motion in said suit brought by said Cross in Rhode Island praying that he may become a party to said action so far as respects the title to the personal estate of said Brown, Steese & Clarke in the hands of said Lippitt Woolen
Company, alleged trustee by attachment on trustee process
122 therein, and may recover and receive the same should said alleged trustee not be discharged in said process, and may be heard as to the charging of said trustee; in which motion and amend-

ments which he offers thereto he has set forth all the facts which appear in the pleadings herein, including this replication, and has given said Lippitt Woolen Co. full notice thereof, and has further set up in said motion and petition that said Cross did not begin and is not prosecuting said suit for himself as a *bona fide* domestic creditor of said Brown, Steese & Clarke in said State of Rhode Island, but colorable only, for the benefit of said International Trust Co. of Boston aforesaid.

Wherefore, for all and singular the premises and the pleadings herein, the plaintiff claims that the defendant is not chargeable as trustee in said suit by said Cross in Rhode Island if it, as in duty bound, discloses the facts of this suit and the pleadings herein set forth.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.

A.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *April 9th*, 1889.

On demand, after date, for value received, we promise to pay to the order of the International Trust Company, at its place of business, in Boston, twenty thousand dollars, with interest at the rate of 5½ per cent. per annum, having deposited with said trust company, as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

123 Business paper as follows:

H. H. Hollis, 10,000; Phœnix Woolen Co., 7,036.63.

C. A. Phelbuck, 2,500; Mackintosh, 5,000.

The market value of which is now $—, with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any substitutes therefor, or any additions thereto, at any broker's board or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

Due —— —.

BROWN, STEESE & CLARKE.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th,
124 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court, and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[L. S.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

[Endorsed:] Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. #4867. Court of common pleas, county of Providence, State of Rhode Island. (Copy, $0.70.)

B.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *May 7th*, 1889.

On demand, after date, for value received, we promise to pay to the order of the International Trust Company, at its place of business, in Boston, twenty thousand dollars, with interest at the
125 rate of 5 per cent. per annum, having deposited with said trust company as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

Note Atlantic, May 7, 4 mos., 10,000; endorsed, Owen Bros.
" " April 11, 5 mos., 10,000; " "

The market value of which is now $—, with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any

substitutes therefor, or any additions thereto, at any broker's board or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

Due —— —.

BROWN, STEESE & CLARK.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th,
126 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc.:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[L. S.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

[Endorsed:] Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. #4867. Court of common pleas, county of Providence, State of Rhode Island. (Copy, $0.70.)

127 To the honorable the judge of the court of insolvency in and for the county of Norfolk, in the Commonwealth of Massachusetts:

Respectfully represent Edward Steese and Amasa Clarke, both of Brookline, in the county of Norfolk, that they and Gideon P. Brown,

of Boston, in the county of Suffolk, constitute the firm of Brown, Steese & Clarke, doing business in said Boston; that they are inhabitants of this State, and that the said Steese and Clarke have been residents of said county of Norfolk for upwards of three months next preceding the date of this petition, and that said firm and all the individual members thereof are indebted in divers sums of money, amounting in the whole to not less than two hundred dollars each, contracted while such inhabitants, which they and each of them and said firm are unable to pay in full, and they, the petitioners, wish to surrender all their joint and separate property for the benefit of their joint and separate creditors and to obtain a discharge from their said joint and separate debts, according to the statutes in this behalf provided.

Wherefore they pray that a warrant may be issued for taking possession of the joint estate of said firm and of the separate estate of its several members, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD STEESE.
AMASA CLARKE.

NORFOLK, *ss:*

AUG. 10, 1889.

Then personally appeared the above-named Edward Steese and Amasa Clarke and severally made solemn oath that the
128 statements contained in the foregoing petition by them subscribed are true, before me—

M. F. DICKINSON, JR.,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

DEDHAM, *August* 21, 1889.

The foregoing petition having been duly considered, and it appearing to the satisfaction of the court that the statements therein contained are true, it is ordered that a warrant thereon be issued.

GEORGE WHITE,
Judge of the Court of Insolvency.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] Court of Insolvency.

On the foregoing petition it is ordered that a copy of the said petition and of this order thereon be served personally on the said Gideon P. Brown, of Boston, in the county of Suffolk, or left at his last and usual place of abode forthwith, that he may appear before the court of insolvency, to be holden at Dedham, in and for said county of Norfolk, on the twenty-first day of August current, at ten

o'clock in the forenoon, then and there to show cause, if any he has, why the prayer of the said petition should not be granted.

Witness George White, Esquire, judge of said court, and the seal thereof, this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JONATHAN COBB, *Register.*

129 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

[L. S.] To the sheriff of said county of Norfolk or either of his deputies, Greeting:

You are hereby directed forthwith, as messenger, to take possession of all the joint and separate estate, real and personal, of Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, and Gideon P. Brown, of Boston, in the county of Suffolk, copartners, doing business in said Boston under the firm name of Brown, Steese and Clarke, insolvent debtors, except such as may be by law exempt from attachment, and of all their joint and separate deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice inside in the newspaper called the Boston Daily Advertiser, printed at Boston, in the county of Suffolk, the first publication to be made forthwith, and to send written notice, by mail or otherwise, within five days after the date hereof, to said debtors and to all the creditors upon the schedule of their creditors to be furnished you by them within three days after the date hereof, which notice shall state:

First. That this warrant has issued against the estate of said debtors.

Second. That the payment of any debts and the delivery of any property belonging to said debtors to them or for their use and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of the debtors to prove their debts and choose one or more assignees of their estate will be held at the court of insolvency, to be holden at Dedham, in
130 said county of Norfolk, on the first Wednesday of September next, at ten o'clock in the forenoon.

And have you there this warrant with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, at Dedham, this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of Court of Insolvency.

(No fees will be allowed under Nos. 4 and 5 unless specifically stated.)

Officer's Return.

NORFOLK, *ss:*

SEPTEMBER 3D, A. D. 1889.

By virtue of the within warrant, I have taken possession of all the estate of the within-named insolvent debtor-, except such as is by law exempted from attachment, and of all their deeds, books of account, and papers which have come to my knowledge; and I have published notice by advertisement on two different days, inside, in the newspapers within mentioned, the first publication of which was on the twenty-third day of August, A. D. 1889.

I also, within five days after the date of the within warrant, sent written notice, as within directed, to the within-named debtors and to the creditors named on the schedule herewith returned and delivered to me by said debtors on the twenty-third day of August, A. D. 1889; and all of said notices were according to the directions set out in said warrant.

Fees.

1.	Service of warrant	$2.00
2.	Necessary travel (at the rate of 4 cents a mile)	9.60
3.	Notice to creditors (at 10 cents each)	15.50
	4. Actual expenses in publishing notices as follows:	
131	Paid Daily Advertiser	3.00
	Postage	3.00
5.	Actual expenses in custody of property and in other services as follows:	
	Cash paid keepers, 14 days	42.00
	Custody of property, 14 days	14.00
		$91.10

HOWARD COLBURN,
Deputy Sheriff, Messenger.

NORFOLK, *ss:*

SEPT. 4, A. D. 1889.

Then personally appeared the said Howard Colburn and made oath that the above expenses returned by him under Nos. 4 and 5 have been actually incurred and paid by him and are just and reasonable, before me—

JOHN D. COBB,
Justice of the Peace.

(Endorsed:) Case No. 737. 2. Warrant in the case of Brown, Steese & Clarke, insolvent debtors. Date, August 21, 1889. Returnable 1-t Wed. Sept., 1889. First publication, August 23, 1889. True copy. Attest: John D. Cobb, assist. register.

132 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] Court of Insolvency.

In the case of Gideon P. Brown, of Boston, in the county of Suffolk, and Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, doing business in said Boston under the firm name of Brown, Steese and Clarke, copartners, insolvent debtors.

Know all men by these presents, that whereas William R. Dupee, of Newton in said Massachusetts, Samuel P. Colt, of Providence in the State of Rhode Island, and Weston Lewis of Boston in said Massachusetts, have been duly appointed assignees in said case; Now, therefore, I, George White, Esquire, judge of the court of insolvency, in and for said county of Norfolk, by virtue of the authority vested in me by the one hundred and fifty-seventh chapter of the Public Statutes and the Laws of said Commonwealth, do hereby convey and assign to the said assignees all the joint and separate estate, real and personal, of the said Gideon P. Brown, Edward Steese and Amasa Clarke, and said Brown, Steese & Clarke, copartnership, insolvent debtors, including all the property of which they were possessed, or which they were interested in or entitled to on the twenty-third day of August in the year of our Lord one thousand eight hundred and eighty-nine, excepting such as may be by law exempted from attachment, with all their joint & separate deeds, books and papers relating thereto.

To have and to hold, all the above-granted premises to the said Wm. R. Dupee, Sam'l P. Colt and Weston Lewis, assignees, as aforesaid, and their heirs, forever; in trust nevertheless for the uses and purposes, with the powers and subject to the conditions and limitations set forth in the chapter and laws aforesaid.

133 In witness whereof, I, the said judge, have hereunto set my hand, and caused the seal of said court to be affixed, on this fourth day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of the Court of Insolvency.

And also on said last-named day the parties file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff,
vs.
THE LIPPITT WOOLEN CO., D'f't.

Agreed Statement of Facts.

In the above action it is agreed, upon information and belief and for the purposes of this suit, that the facts as stated and not denied in the pleadings herein are true, except that conclusions and inferences of law or effects thereof as stated on advice are not admitted.

It is further agreed that the statutes of said State of Rhode Island with regard to trustee process are as follows:

Public Statutes of Rhode Island.

CHAP. 207, SEC. 22. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands of any person, copartnership or corporation as trustee, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and the time of day of
134 such service, with the person or some member of the copartnership named in such writ as trustee, or if such trustee or the corporation whose shares shall be directed to be attached shall be a bank, with the cashier thereof, if an insurance company, with the president or secretary thereof, and if any other corporation, it shall be served by leaving an attested copy thereof at the manufactory where the person is employed whose wages are to be trusteed or at the usual place where the payment of said wages is made, upon the treasurer thereof or the person executing the duties of treasurer thereof or the agent or superintendent thereof, or at the office of such corporation with some person there employed, and such officer shall also leave an attested copy of such writ so endorsed with the defendant or at his last and usual place of abode, or if he have none within the precinct of such officer, the latter shall send such copy to the defendant by mail, if his address is known to or can be ascertained by such officer.

CHAP. 212, SEC. 5. In case any action commenced by attachment of real estate or by foreign attachment shall not be answered, and the defendant shall not return into this State before the return of the writ, the court shall continue the action one term, and the defendant shall have a right to answer the same six days previous to the term to which such action shall be continued, or may be permitted to answer the same on the first or second day of said term in like manner as is provided in the preceding section.

SEC. 4. The defendant in a civil action appealed from the judg-

ment of a justice court may file any plea or answer therein other than a plea of abatement on or before the second day of the term of the court at which such appeal is entered.

CHAP. 208, SEC. 1. In all attachments of real estate, or of goods and chattels, or of personal estate in the hands of a trustee, or
135 of stock or shares in any banking association or other incorporated company, he who shall first procure any such attachment to be made for any just debt or damages shall be entitled to have his debt or damages satisfied before any other demand for which the same shall be attached or taken by execution at the suit of any other person, and all others in order of attachment.

SEC. 9. Whenever any banking association or incorporated company shall be served with a copy of a writ attaching its stock or shares, if a bank, the cashier thereof, if an insurance company, the president or secretary thereof, and if any other corporation, the treasurer thereof or person executing the duties of treasurer, shall render an account upon oath to the court to which such writ shall be returnable of what stock or shares the defendant had in such company at the time of the serving such writ.

SEC. 10. The person, member of the copartnership or officer of the corporation with whom a copy of the writ shall have been left for the purpose of attaching the person- estate of the defendant in the hands or possession of such person, copartnership or corporation, as trustee, shall render an account, in writing, upon oath, to the court to which such writ is returnable, of what estate such person, copartnership or corporation had in his hands or possession at the time such writ was served if any, or if he had none either directly or indirectly, shall return such fact in writing, under oath, to such court.

SEC. 11. The disclosure made by virtue of either of the two preceding sections shall be sworn to before any person authorized to administer oaths and shall be filed with the clerk of the court, if there be a clerk, otherwise with the court to which such writ shall be returnable.

SEC. 12. Either party may examine the person so making oath, upon written interrogatories, to be filed with such clerk, or
136 court, if there be no clerk, and such person, after having been furnished with a copy of such interrogatories, shall answer the same responsively in writing under oath administered as aforesaid, and shall return the answer to such clerk, or to such court, if there be no clerk, at such time as such court shall by general rule or by special order in such case direct.

SEC. 13. If it shall appear by the disclosure of the person making such oath that the person, copartnership or corporation served with a copy of such writ had at the time of service thereof any of the personal estate of the defendant in his or their hands, then and in such case the plaintiff, after having recovered judgment against such defendant, may bring his action against such person, copartnership or corporation to recover so much as will satisfy such judgment, with interest and costs, if there shall appear by such disclosure to be a sufficiency for the same, otherwise for so much as shall appear by the same to be in his hands.

SEC. 14. Whenever it shall appear that several persons, copartnerships or corporations had property of the defendant as such trustee, the plaintiff may sue each separately and recover the amount in his hands until such plaintiff shall receive full payment of his judgment against the original defendant, with interest and costs.

SEC. 15. Any trustee, after final judgment against the defendant, may satisfy such judgment or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor, and such payment shall avail for his discharge, as against both plaintiff and defendant, for the amount thereof.

SEC. 16. If it shall appear by the disclosure that the personal estate in the hands of the trustee belonging to the defendant did not consist of money, but of one or more specific articles, such trustee may, after final judgment shall have been rendered against
137 the defendant, surrender or deliver to the officer charged with the execution issued on such judgment such specific articles, that the same may be taken on such execution.

SEC. 17. Such surrender or delivery shall be a good discharge to the trustee for such articles, as to both plaintiff and defendant in the action.

SEC. 18. If any person, copartnership or corporation, after being served as trustee with a copy of any writ, and after having been tendered at the time of such service, two dollars and his travelling fees as a witness in the supreme court or court of common pleas, and one dollar and like travelling fees in any other court, shall refuse or neglect to render such an account on oath as aforesaid, of what personal estate of the defendant he had in his hands at the time of the service of such copy, such trustee shall be liable to satisfy the judgment that the plaintiff shall obtain against the defendant in such writ, to be recovered by action on the case, except as provided in section twenty-two, chapter two hundred twenty-two.

SEC. 19. If several trustees shall neglect or refuse to render an account upon oath in the same case, then the plaintiff shall bring his action against all such trustees jointly, and in no other manner.

SEC. 20. Every person who shall be served with such copy of a writ against any defendant may file an answer to such action and defend the suit in behalf and in the name of the defendant.

SEC. 21. If it shall appear by such disclosure that the person, copartnership or corporation who had been served as trustee with a copy of such writ had not any of the personal estate of the defendant in his hands, then such action shall be dismissed and the person who shall appear to defend the same shall recover his costs, unless the writ has been duly served on the defendant.

138 SEC. 22. Every person, copartnership or corporation served with a copy of a writ for attaching the estate of another in their hands shall be paid all lawful costs and charges which they shall incur in consequence of their being served with such writ of attachment by the person who brings the action, and so much of such charge as shall be judged reasonable by the court before whom the cause shall be pending shall be allowed in the bill of costs.

SEC. 23. The word trustee, wherever occurring in this title, shall be deemed to include the words attorney, agent, factor and debtor.

CHAP. 213, SEC. 10. Whenever any person shall be served with a copy of a writ by which he shall be sought to be charged as trustee of the defendant named therein and such person shall appear and answer to the action so commenced as to whether he is or is not a trustee of the defendant, the court in which such action is brought or may be pending shall determine whether the person so served is properly chargeable as the trustee of the defendant, and if chargeable, to what extent.

SEC. 11. Any person summoned as trustee of a defendant making a false answer or affidavit in any case or in any affidavit required of him or which he may take in any action, shall be liable to the plaintiff, in an action of the case, for any damages which may result to him from such false answer or affidavit.

CHAP. 222, SEC. 21. In every execution issued against any defendant in an action in which another person shall have been charged, as the trustee of such defendant, under the provisions of section ten of chapter two hundred thirteen, or by the default of the person served with a copy of the plaintiff's writ for the purpose of charging him as the trustee of the defendant to appear and file his affidavit therein, there shall be inserted next after the words
139 "goods and chattels or real estate of the defendant," the words following, namely, "and the personal estate of the said defendant, in the hands and possession of (here insert the name of the trustee,) charged as trustee of the said defendant to the extent of (here insert the amount for which the trustee is charged)," or if the trustee shall be charged by his default in not filing the necessary affidavit in said cause, insert in lieu of the clause fixing the extent to which such trustee shall be charged, the following, after the word defendant, namely, "by the default of the said trustee to file his affidavit in said action."

SEC. 22. If any person named as the trustee of a defendant in any execution, who shall have had a judgment that he be charged as trustee rendered against him by default, shall make affidavit as to whether or not he had personal property of the defendant in his hands or possession at the time of the service of the original writ in said action upon him and stating the amount, if any, so in his hands, and that he failed to file an affidavit therein before he was charged by the court as the trustee of the defendant, either from want of actual notice of the service of the said writ, or by accident or mistake, and shall give such affidavit to the officer charged with the service of said execution, the officer shall annex such affidavit to his return to the said execution, and if the trustee shall pay to the said officer the money paid for his attendance at the time of the service of the original writ, and another like sum, together with the sum stated in his affidavit to be so in his hands, if any, no further proceedings shall be had therein against such trustee, except as is provided in section eleven of chapter two hundred thirteen, and the officer shall pay the money paid to him by such trustee to the plaintiff.

140 *Acts of* 1884.

CHAP. 433, SEC. 1. Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate under an assignment or otherwise, may, on his own motion, become a party to the action so far as respects the title to said personal estate.

SEC. 2. The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable, but either party to the suit, or any claimant of the estate so attached, may allege and prove any facts not stated nor denied by said trustee that may be material in so deciding.

SEC. 3. Any question of fact arising upon such additional allegations may be tried and determined by the court or justice and in the court of common pleas and in the supreme court the same may be submitted to a jury in such manner as the court shall direct.

Acts of January, 1889.

CHAP. 752, SEC. 1. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands or possession of any person, copartnership or corporation as trustee, the defendant may at any time after the service of such writ upon such trustee and before final judgment deliver to the officer who served such writ a bond in the penal sum of the amount of damages laid in the writ signed by the defendant or some one in his behalf, with sureties to the satisfaction of such officer with a condition therein that the same shall be null and void, if the final judgment in the action in which such writ was served shall be forthwith paid and satisfied after the rendition thereof.

141 SEC. 2. Upon the acceptance of such bond by such officer he shall forthwith deliver to the person, copartnership or corporation named as trustee in such writ a certified copy of the writ, with an endorsement thereon signed by said officer setting forth therein that he has accepted such bond and released the shares or personal estate in the hands or possession of such trustee from such attachment, and thereupon the shares or personal estate in the hands or possession of such trustee shall become discharged from such attachment.

SEC. 3. In case such writ shall have been returned to the court to which it is made returnable and duly entered therein, or in case the officer who served such writ shall from any cause be unable to perform the duties mentioned in section 2 of this act, then such bond shall be delivered to the clerk of the court to which such writ is made returnable, if there be a clerk, but if there be no clerk then to the justice thereof, and such clerk or justice shall proceed in the manner provided in sections 1 and 2 of this act.

SEC. 4. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.
H. L. BOUTWELL, *Att'y for Def't.*

Thereupon said agreed facts being presented to the court and seen and understood, on the twenty-third day of March, A. D. 1892, judgment is ordered thereon for the plaintiff.

Whereupon, on the twenty-fourth day of March, 1892, the following is filed:

SUFFOLK, *ss:*

Superior Court, Mar. 23, 1892.

142 WILLIAM R. DUPEE ET ALi. (THEOPHILUS KING, by Amendment), Plaintiffs,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Agreement.

In the above-entitled action, in accordance with the direction of the court in ordering judgment that execution be stayed and the parties plaintiff and defendant file an agreement therefor, it is hereby agreed that execution shall not issue until all proceedings in the action referred to in the pleadings herein of John A. Cross *vs.* Brown, Steese & Clarke, now pending in the court of common pleas, in the county of Providence and State of Rhode Island and Providence Plantations, wherein this defendant has been summoned as alleged trustee, shall be finally determined.

CHARLES THORNTON DAVIS,
Att'y for Pl'ff.
H. L. BOUTWELL, *Att'y for Def't.*

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereto affixed.

Witness Albert Mason, Esquire, chief justice of our superior
[L. S.] court, at Boston, in said county of Suffolk, this second day of March, in the year of our Lord one thousand eight hundred and ninety-three.

(S'g'd) JOS. A. WILLARD, *Clerk.*

143 (*Copy of Rescript as to Theophilus King's Becoming a Party as to the Question of Title to Certain Trusteed Property. Filed October* 3, 1893.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK. } No. 4867.

ROGERS, *J.:*

The rescript entered in this case March 6, 1893, entitled "Rescript *In re* Theophilus King's motion to intervene," is withdrawn, and

said King, claimant of the personal estate attached as the property of the defendants on trustee process in the hands of the Wauskuck Co. and of the Lippitt Woolen Co., has leave to become a party to the above-entitled cause as far as respects the title to said personal estate.

144 (*Copy of Exhibit B. Filed May* 7, 1892.)

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss.*:

Court of Insolvency.

I, George White, Esquire, judge of the court of insolvency within and for the county of Norfolk, hereby certify that Jonathan Cobb, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court and has by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this fourth day of May, in the year of our Lord eighteen hundred and ninety-two.

(S'g'd) GEORGE WHITE,
Judge of the Court of Insolvency.

145 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss.*:

[L. S.] Court of Insolvency.

I, Jonathan Cobb, register of the court of insolvency for said county of Norfolk, having by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court on file and of record in the office of said court, viz., petition for leave to sell assets of Brown, Steese & Clarke to Theophilus King, together with order of court allowing said petition.

In witness whereof I have hereunto set my hand and the seal of said court this fourth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

[L. S.] (S'g'd) JONATHAN COBB, *Register.*

146 Whereas, William R. Dupee, Samuel P. Colt and Weston Lewis, assignees in insolvency of the firm of Brown, Steese and Clarke hold certain property and assets formerly belonging to said firm, and being all of the assets of said firm now in their hands and possession which are known to them and of which a schedule is hereto annexed; and

Whereas, a large portion of said assets consists of claims, the amount or validity of which is in dispute and in regard to which litigation is now pending or will be necessary or probable in order

to realize the value thereof for the benefit of the said insolvent estate; and

Whereas, Theophilus King is ready and has offered to buy said assets a schedule of which is hereto annexed as aforesaid, and said assignees are ready and willing with the approval of the court to sell the same to him upon the terms and for the consideration hereinafter named;

Now, therefore, in consideration of the premises and other sufficient consideration, it is agreed by and between the parties hereto, subject to the approval of the court, as follows:

I. Said King agrees to buy and said assignees agree to sell to him all their right, title and interest in and to the assets set forth in said schedule hereto annexed being all the assets of the insolvent estate of said firm known to and not yet disposed of by said assignees.

Said King agrees to pay for said assets such sum of money as together with the amount already paid out by said assignees as dividends upon claims proved and allowed by the judge of the court of insolvency for Norfolk county, shall equal ten per cent. of the amount of all claims heretofore and hereafter finally allowed by said court against the said insolvent estate, and in addition thereto

147 the amounts charged by the said assignees as compensation for themselves and the counsel employed by them in the management of said estate in the account filed by them in the said court of insolvency on the — day of ——, 1890.

Payment of said purchase price shall be made as follows:

— dollars within thirty days from the approval of this contract by said court and the remainder in such amounts and at such time or times as shall enable said assignees to pay to the creditors whose claims shall be hereafter finally allowed a dividend of ten per cent. upon their respective claims as allowed by the court.

Provided however, and it is agreed that if said King or his legal representatives shall receive from the assets to be transferred to him as aforesaid as proceeds thereof after deducting all payments in or for and all reasonable expenses of collection, compromise, disposition, adjustment, prosecution and defence of the assets and litigation herein transferred to him or his possession or control, herein including all reasonable outlay and charges for the aid and services of others than himself, a sum equal to the amount or amounts paid by him to the assignees as aforesaid with interest thereon at the rate of — per cent. per annum from the several dates of payment thereof, he shall account for and pay over as and when received the surplus of said net proceeds to said assignees for the benefit of the said insolvent estate, except that said King shall in no event be called upon or obliged to account for more than sixty-eight thousand dollars on account of the claims now outstanding of said assignees against the Riverside and Oswego mills or the trustees for the benefit of creditors thereof or Bullens and Sawyer trustees, under or by virtue of a certain agreement between said assignees of Brown, Steese & Clarke, said trustees for creditors of the Riverside and Oswego mills

and said Bullens and Sawyer trustees dated —— —, 1890, so
148 far as said contract pertains to the wool in Providence attached as the property of the firm of Brown, Steese & Clarke and not to the affairs of Gideon P. Brown individually, it being understood that the draft of twenty-five thousand dollars ($25,000) mentioned in said contract, the application of which was therein left optional to the said assignees of Brown, Steese & Clarke shall now be finally allowed as belonging to and in reduction of the amount due said Brown individually from said Riverside and Oswego mills at the time of the failure of said mills.

It is further agreed that upon request of the said assignees at any time after the said King has received from the net proceeds of the assets to be transferred to him as aforesaid the purchase price paid by him and interest as hereinbefore set forth and payments, expenses and charges as aforesaid he shall retransfer and convey unto said assignees of Brown, Steese & Clarke or their successors in the trust for the benefit of said insolvent estate, all of the said assets then undisposed of by him except that he shall pay to the said assignees the sum of sixty-eight thousand dollars ($68,000) instead of transferring to them said claim under said Riverside and Oswego mills contract in case he shall not have previously have accounted for the same without any other or further consideration therefor.

It is further understood and agreed that prior to any such retransfer said King shall have the entire management and control of the assets transferred to him, and may reduce the same to money, collect, sue for, recover, or otherwise acquit, compromise and dispose of the same in such manner and upon such terms as he shall see fit, but he shall keep an accurate account of all expenses incurred in the collection, recovery and disposal of said assets and of the amounts received by him, which shall at all times be open to the inspection
of the said assignees of Brown, Steese & Clarke and their legal
149 representatives, and said King covenants and agrees to use his best skill, efforts and endeavors to realize as much as possible from said assets and all of them either by compromise or otherwise, as he shall deem most advisable, it being understood and agreed that he may use the names of the said assignees in any way necessary or proper for the collection and recovery of said claims or any of them, but without expense to them and they agree to take all proper and lawful action which he may request and at his expense to aid him in the accomplishment of the purposes hereof; and

Whereas, there are now pending certain suits a schedule of which is hereto annexed, in which said assignees of Brown, Steese & Clarke are parties either defendant or plaintiff, now it is agreed that said suits or any of them shall be disposed of in the manner and upon the terms desired by said King, but said King shall assume and pay all costs, if any, which may be taxed upon the said assignees of Brown, Steese & Clarke in the final disposition of said suits or any of them and shall also pay all counsel and attorney's fees hereafter incurred in the conduct and management of said suits or any of them until the rights and claims forming the subject-matter of said

suits shall, if at all, be retransferred to said assignees or their successors in said trust as hereinbefore provided.

It is further understood that the transfer of said assets is to be without warranty express or implied on the part of said assignees, nor shall this agreement be construed as selling any assets of said firm, if any, not now known to said assignees nor any assets of the estates of the individual partners of said firm all of which are expressly excepted from the terms of this agreement.

150 Witness the hands and seals of the parties hereto this — day of ——, eighteen hundred and ninety.

(Signed) THEOPHILUS KING. [SEAL.]

151 *List of Assets Referred to Within.*

1. Cash in bank (which is to be retained by assignees as part payment of purchase price) over and above amount reserved for expenses per agreement.
2. All accounts payable shown by the books of the firm of Brown, Steese & Clarke as due said firm.
3. Interest in contract with assignees of Riverside and Oswego mills as far as it pertains to the firm of Brown, Steese & Clarke, but not further and not as to the matter of G. P. Brown.
4. Interest in wool in Providence.
5. Interest in wool sent to Mass. Loan & Trust Co. from Providence August 5, '89.
6. All claim upon and interest in wool and proceeds claimed by the Sturtevant estate, and all benefit of any surrender of claims or dividends by said estate against the firm of Brown, Steese & Clarke, but no dividend shall ever be paid or received thereon by anybody.
7. Claim against Atlantic mills.
8. Claim against Wauskuck Co.
9. Claim against Lippitt Woolen Co.
10. Claim against Phœnix Woolen Co.
11. All benefit arising or growing out of the suits or any of them set forth in Schedule "B."

152 *List of Suits In re Matters of Brown, Steese & Clarke.*

1. Sturtevant *et ali.*, exsrs., *v.* H. H. Hollis *et als.*
2. Sturtevant *et ali.*, exsrs., *vs.* J. H. Russell *et als.*
   Bills in eq., supreme judicial court, Suffolk Co.

3. Mass. Loan & Trust Co. *vs.* Seavy.
   Replevin superior court, Suffolk Co.

4. Wm. R. Dupee *et ali.*, assignees, *vs.* International Trust Co.
5. Do. do. do. do. Metropolitan Nat'l Bank.
6. Do. do. do. do. Mass. Loan and Trust Co.
7. Do. do. do. do. Hollis Dressed M.& W. Co.

   Bills in equity, supreme judicial court, Suffolk Co.

8. Mass. Loan & Trust Co. *vs.* Brown, Steese & Clarke.
9. John A. Cross *vs.* do. do.
10. Industrial Trust Co *vs.* do. do.
11. Metropolitan Nat'l Bank *vs.* do. do.
12. Hollis D. H. & W. Co. *vs.* do. do.
13. Washington Nat'l Bank *vs.* do. do.
14. Phœnix Nat'l Bank *vs.* do. do.

Suits in Rhode Island, with attachments.

15. S. A. Maxfield *vs.* Brown, Steese & Clarke.
Suit in Maine, with attachment.

153 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

Court of Insolvency.

In the Matter of BROWN, STEESE & CLARKE, Insolvent Debtors.

To the honorable the judge of probate and insolvency within and for the county of Norfolk:

Respectfully represent unto your honor William R. Dupee, Samuel P. Colt, and Weston Lewis that they are assignees in insolvency of said firm, and that they are now engaged in the performance of their duties as such assignees; that the assets of said firm remaining in their hands and undisposed of consist very largely of claims in dispute, to determine which much time and litigation will be necessary, during which time they will be unable to make a further dividend to the creditors of said firm; that they have received an offer from one Theophilus King for the purchase of the assets of said firm remaining in the hands undisposed of, so far as they are known to your petitioners, upon the terms set forth in the draft of agreement hereto annexed, which offer they believe it for the best interests of the creditors of said firm to accept. Wherefore they pray that they may be authorized and empowered to make said sale, according to the terms of said draft of agreement, and to sign said agreement and to transfer and deliver said assets upon the terms thereof.

(Signed) WM. R. DUPEE,
(Signed) SAM'L P. COLT,
WESTON LEWIS,
By H. G. NICHOLS, *Att'y.*

154 We, the undersigned, creditors of said firm of Brown, Steese and Clarke, whose claims have been allowed by the court of insolvency for Norfolk county in the amounts set against our respective names, hereby approve of the foregoing petition and request that the prayer thereof may be granted.

Names. Amount.

And endorsed on the back: Nov. 19, '90. Allowed. G. W.

155 (*Copy of Exhibit D. Filed May* 7, 1892.)

Whereas, William R. Dupee, Samuel P. Colt and Weston Lewis, assignees in insolvency of the firm of Brown, Steese and Clarke, hold certain property and assets formerly belonging to said firm, and being all of the assets of said firm now in their hands and possession which are known to them and of which a schedule is hereto annexed;

And whereas, a large portion of said assets consists of claims, the amount or validity of which is in dispute and in regard to which litigation is now pending or will be necessary or probable in order to realize the value thereof for the benefit of the said insolvent estate;

And whereas, Theophilus King is ready and has offered to buy said assets a schedule of which is hereto annexed as aforesaid, and said assignees are ready and willing with the approval of the court to sell the same to him upon the terms and for the consideration hereinafter named;

Now, therefore, in consideration of the premises and other sufficient consideration, it is agreed by and between the parties hereto, subject to the approval of the court, as follows:

1. Said King agrees to buy and said assignees agree to sell to him all their right, title and interest in and to the assets set forth in said schedule hereto annexed being all the assets of the insolvent estate of said firm known to and not yet disposed of by said assignees.

Said King agrees to pay for said assets such sum of money as together with the amount already paid out by said assignees as dividends upon claims proved and allowed by the judge of the court of insolvency for Norfolk county, shall equal ten per cent. of the amount of all claims heretofore and hereafter finally allowed by said court against the said insolvent estate, and in addition thereto the amounts charged by the said assignees as compensation for

156 themselves and the counsel employed by them in the management of said estate in the account filed by them in the said court of insolvency on the — day of ——, 1890.

Payment of said purchase price shall be made as follows: ($164,186.12) one hundred & sixty-four thousand one hundred and eighty-six $\frac{12}{100}$ dollars within thirty days from the approval of this contract by said court and the remainder in such amounts and at such time or times as shall enable said assignees to pay to the creditors whose claims shall be hereafter finally allowed a dividend of ten per cent. upon their respective claims as allowed by the court.

Provided however, and it is agreed that if said King or his legal representatives shall receive from the assets to be transferred to him as aforesaid as proceeds thereof after deducting all payments in or for and all reasonable expenses of collection, compromise, disposition, adjustment, prosecution and defence of the assets and litigation herein transferred to him or his possession or control, herein including all reasonable outlay and charges for the aid and serv-

ices of others than himself, a sum equal to the amount or amounts paid by him to the assignees as aforesaid with interest thereon at the rate of — per cent. per annum from the several dates of payment thereof, he shall account for and pay over as and when received the surplus of said net proceeds to said assignees for the benefit of the said insolvent estate, except that said King shall in no event be called upon or obliged to account for more than sixty-eight thousand dollars on account of the claims now outstanding of said assignees against the Riverside and Oswego mills or the trustees for the benefit of creditors thereof or Bullens and Sawyer trustees, under or by virtue of a certain agreement between said assignees of Brown, Steese & Clarke, said trustees for creditors of the Riverside and Oswego mills and said Bullens and Sawyer trustees dated —— —, 1890, so far as said contract pertains to the
157 wool in Providence attached as the property of the firm of Brown, Steese & Clarke and not to the affairs of Gideon P. Brown individually, it being understood that the draft of twenty-five thousand dollars ($25,000) mentioned in said contract, the application of which was therein left optional to the said assignees of Brown, Steese & Clarke shall now be finally allowed as belonging to and in reduction of the amount due said Brown individually from said Riverside and Oswego mills at the time of the failure of said mills.

It is further agreed that upon request of the said assignees at any time after the said King has received from the net proceeds of the assets to be transferred to him as aforesaid the purchase price paid by him and interest as hereinbefore set forth and payments, expenses and charges as aforesaid he shall retransfer and convey unto said assignees of Brown, Steese & Clarke or their successors in the trust for the benefit of said insolvent estate, all of the said assets then undisposed of by him except that he shall pay to the said assignees the sum of sixty-eight thousand dollars ($68,000) instead of transferring to them said claim under said Riverside and Oswego mills contract in case he shall not have previously have accounted for the same without any other or further consideration therefor.

It is further understood and agreed that prior to any such retransfer said King shall have the entire management and control of the assets transferred to him, and may reduce the same to money, collect, sue for, recover, or otherwise acquit, compromise and dispose of the same in such manner and upon such terms as he shall see fit, but he shall keep an accurate account of all expenses incurred in the collection, recovery and disposal of said assets and of the amounts received by him, which shall at all times be open to the inspection of the said assignees of Brown, Steese & Clarke
158 and their legal representatives, and said King covenants and agrees to use his best skill, efforts and endeavors to realize as much as possible from said assets and all of them either by compromise or otherwise, as he shall deem most advisable, it being understood and agreed that he may use the names of the said assignees in any way necessary or proper for the collection and recovery of said claims or any of them, but without expense to them and

they agree to take all proper and lawful action which he may request and at his expense to aid him in the accomplishment of the purposes hereof;

And whereas, there are now pending certain suits a schedule of which is hereto annexed, in which said assignees of Brown, Steese & Clarke are parties either defendant or plaintiff, now it is agreed that said suits or any of them shall be disposed of in the manner and upon the terms desired by said King, but said King shall assume and pay all costs, if any, which may be taxed upon the said assignees of Brown, Steese & Clarke in the final disposition of said suits or any of them and shall also pay all counsel and attorney's fees hereafter incurred in the conduct and management of said suits or any of them until the rights and claims forming the subject-matter of said suits shall, if at all, be retransferred to said assignees or their successors in said trust as hereinbefore provided.

It is further understood that the transfer of said assets is to be without warranty express or implied on the part of said assignees, nor shall this agreement be construed as selling any assets of said firm, if any, not now known to said assignees nor any assets of the estates of the individual partners of said firm all of which are expressly excepted from the terms of this agreement.

159 Witness the hands and seals of the parties hereto this nineteenth day of November, eighteen hundred and ninety.

(Signed) THEOPHILUS KING, [SEAL.]
(Signed) WM. R. DUPEE, [SEAL.]
(Signed) WESTON LEWIS, [SEAL.]
(Signed) SAM'L P. COLT, [SEAL.]

Assignees of Brown, Steese & Clarke, Insolvent Debtors.

160 *List of Suits In re Matters of Brown, Steese & Clarke.*

1. Sturtevant *et ali.*, exsrs., *v.* H. H. Hollis *et als.*
2. Sturtevant *et ali.*, exsrs, *vs.* J. H. Russell *et al.*
   Bills in eq., supreme judicial court, Suffolk Co.
3. Mass. Loan & Trust Co. *vs.* Seavy.
   Replevin, superior court, Suffolk Co.
4. Wm. R. Dupee *et ali.*, assignees, *vs.* International Trust Co.
5. Do. do. do. do. Metropolitan Nat'l Bank.
6. Do. do. do. do. Mass. Loan and Trust Co.
7. Do. do. do. do. Hollis Dressed M. & W. Co.
   Bills in equity, supreme judicial court, Suffolk Co.
8. Mass. Loan & Trust Co. *vs.* Brown, Steese & Clarke.
9. John A. Cross *vs.* do. do.
10. Industrial Trust Co. *vs.* do. do.
11. Metropolitan Nat'l Bank *vs.* do. do.
12. Hollis D. M. & W. Co. *vs.* do. do.
13. Washington Nat'l Bank *vs.* do. do.
14. Phœnix Nat'l Bank *vs.* do. do.
    Suits in Rhode Island, with attachments.
15. S. A. Maxfield *vs.* Brown, Steese & Clarke.
    Suit in Maine, with attachment.

161 *List of Assets Referred to Within.*

1. Cash in bank (which is to be retained by assignees as part payment of purchase price) over and above amount reserved for expenses per agreement.
2. All accounts payable shown by the books of the firm of Brown, Steese & Clarke as due said firm.
3. Interest in contract with assignees of Riverside and Oswego mills, as far as it pertains to the firm of Brown, Steese & Clarke, but not further and not as to the matter of G. P. Brown.
4. Interest in wool in Providence.
5. Interest in wool sent to Mass. Loan & Trust Co. from Providence August 5, '89.
6. All claim upon and interest in wool and proceeds claimed by the Sturtevant estate, and all benefit of any surrender of claims or dividends by said estate against the firm of Brown, Steese & Clarke, but no dividend shall ever be paid or received thereon by anybody.
7. Claim against Atlantic mills.
8. Claim against Wanskuck Co.
9. Claim against Lippitt Woolen Co.
10. Claim against Phœnix Woolen Co.
11. All benefit arising or growing out of the suits or any of them set forth in Schedule "B."

162 (*Copy of Exhibit E.*)

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

Court of Insolvency.

I, George White, Esquire, judge of the court of insolvency within and for the county of Norfolk, hereby certify that Jonathan Cobb, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court and has by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord eighteen hundred and ninety-two.

(S'g'd) GEORGE WHITE,
[L. S.] *Judge of the Court of Insolvency.*

163 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] Court of Insolvency.

I, Jonathan Cobb, register of the court of insolvency for said county of Norfolk, having by law the custody of the seal and all the

records, books, documents, and papers of or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court on file and of record in the office of said court.

In witness whereof I have hereunto set my hand and the seal of said court this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

[L. S.] (S'g'd) JONATHAN COBB, *Register.*

164 COMMONWEALTH OF MASSACHUSETTS, } ss:
Norfolk, }

Court of Insolvency.

In the Case of BROWN, STEESE & CLARK, Insolvent Debtors.

I, John M. Graham, president of the International Trust Company, a corporation duly established by law and having its usual place of business at Boston, State of Massachusetts, hereto duly authorized by said corporation, do swear that said Brown, Steese and Clark, by whom proceedings in insolvency have been instituted, at and before the date of such proceedings were and still are, according to statement and memo. hereto annexed, justly and truly indebted to our said corporation in the sum of thirty-six thousand two hundred eight & $\frac{81}{100}$ dollars ($36,208.81), for which sum or any part thereof I have not nor has any other person, to the use of said corporation, to my knowledge or belief, received any security or satisfaction whatever beyond what has been disposed of agreeably to law.

And I do further swear that, to the best of my knowledge and belief, the said claim was not procured by said corporation for the purpose of influencing the proceedings in this case.

And I do further swear that I have not and, to the best of my knowledge and belief, said corporation has not, directly or indirectly, made or entered into any bargain, arrangement, or agreement, express or implied, to sell, transfer, or dispose of said corporation's claim or any part of its claim against said debtor, nor have I nor has said corporation, to the best of my knowledge and belief, directly or indirectly, received or taken or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatsoever to myself or to any person or persons to said corporation's use or benefit under or with any understanding or
165 agreement, express or implied, whereby said corporation's vote for assignees or its assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced, or controlled.

JNO. M. GRAHAM,
Pres't International Trust Co.

SUFFOLK, ss:

MAY 29, 1890.

Then personally appeared the above-named John M. Graham and made solemn oath that the foregoing declaration by him subscribed is true, before me—

R. M. MORSE, JR.,
Justice of the Peace.

166	Note Phœnix Woolen Co., due Sept. 11, '89	$4,876.91	
	Prot. fee	2.04	
		4,878.95	
	End. Brown, Steese & Clark, less int. to Aug. 21, '89	17.09	
			$4,861.86
	Note Phœnix Woolen Co., due Oct. 21, '89	5,062.41	
	Prot. fee	2.02	
		$5,064.43	
	End. Brown, Steese & Clark, less int.	50.62	
			5,013.81
"	Phœnix Woolen Co., due Oct. 22, '89	$5,015.99	
		2.02	
		5,018.01	
	End. Brown, Steese & Clark, less int.	50.98	
			4,967.03
	Accept. Brown, Steese & Clark, due Sept. 30th.	5,000	
	Prot. fee	2.04	
		5,002.04	
	In favor H. H. Hollis, end. G. P. Brown, less int.	32.50	
			4,969.54
"	Brown, Steese & Clark, due Nov. 5	$5,000	
	Prot. fee	2.04	
		5,002.04	
	In favor H. H. Hollis, end. G. P. Brown, less int.	62.50	
			4,939.54
"	Brown, Steese & Clark, due Nov. 5	$5,000	
	Prot. fee	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less int.	62.50	
			4,939.54

Note J. S. Brown, due Oct. 18, '89		$5,384.40	
P. fee		2.02	
		5,386.42	
End. Brown, Steese & Clark, less int		51.14	
			5,335.28
Accept. Brown, Steese & Clark, due Nov. 11, '89.		5,000	
P. fee		2.04	
		5,002.04	
In favor Jno. Metcalf, end. G. P. Brown, less int		66.61	
			4,935.43
" Brown, Steese & Clark, due Nov. 15, '89.		5,000	
P. fee		2.04	
		5,002.04	
In favor Jno. Metcalf, end. G. P. Brown, less int		70	
			4,932.04
" Brown, Steese & Clark, due Oct. 10, '89.		5,000	
P. fee		2.06	
		5,002.06	
In favor J. S. Mackintosh, end. G. P. Brown and G. W. Hollis, less int		41.69	
			4,960.33
Note Riverside & Oswego Mills, due Nov. 23, '89.		12,671.34	
Prot. fee		2.02	
		12,673.36	
End. Brown, Steese & Clark, less int		194.29	
			12,479.07
Total			$62,333.47
167 Less Philbrick Bros.' note paid. $2,500			
Less interest on demand note. 188.33			
		$2,311.67	
Less Norway Plains note paid		10,000	
" proceeds of sale of draft $10,000 on Brown, Steese & Clarke, by H. H. Hollis, @ 25%		2,497.59	
" proceeds of sale note $7,036.63, Phœnix Woolen Co., @ 25%		1,761.78	
" proceeds of sale note $12,131.67, Riverside & Oswego mills, @ 62½%		7,463.52	
" proceeds of sale draft $5,000, J. S. Mackintosh, @ 31%		1,551.66	
			25,586.22
Bal			36,747.25
Less dividend from J. S. Brown			538.44
			36,208.81

168 (Endorsed:) 515. (Firm.) Case No. 737. Oath of International Trust Co., a corporation, creditor. In the case of Brown, Steese & Clarke, insolvent debtor. True copy of proof excepting the notes, etc., used as vouchers. Attest: John D. Cobb, assist. register. 36,747.25. Allowed. G. W., judge. Feb. 4, '91.

169 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

Court of Insolvency.

In the Case of GIDEON P. BROWN, Insolvent Debtor.

I, John M. Graham, president of the International Trust Company, a corporation duly established by law, and having its usual place of business at Boston, State of Massachusetts, hereto duly authorized by said corporation, do swear that said Gideon P. Brown, by whom proceedings in insolvency have been instituted, at and before the date of such proceedings was and still is, on notes and draft-, according to statement and memoranda hereto annexed, justly and truly indebted to our said corporation in the sum of forty-four thousand six hundred seventy-two & $\frac{18}{100}$ dollars, for which sum or any part thereof I have not, nor has any other person to the use of said corporation, to my knowledge or belief, received any security or satisfaction whatever beyond what has been disposed of agreebly to law.

And I do further swear that to the best of my knowledge and belief the said claim was not procured by said corporation for the purpose of influencing the proceedings in this case.

And I do further swear that I have not, and to the best of my knowledge and belief said corporation has not, directly or indirectly, made or entered into any bargain, arrangement, or agreement, express or implied, to sell, transfer, or dispose of said corporation's claim or any part of its claim against said debtor; nor have I nor has said corporation, to the best of my knowledge and belief, directly or indirectly, received or taken or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatsoever to myself or to any person or persons to said corporation's use or benefit, under or with any understanding or
170 agreement, express or implied, whereby said corporation's vote for assignees or its assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced, or controlled.

JNO. M. GRAHAM,
Pres't International Trust Co.

SUFFOLK, ss:

MARCH 3, 1890.

Then personally appeared the above-named John M. Graham and

made solemn oath that the foregoing declaration by him subscribed is true, before me—

R. M. MORSE, JR.,
Justice of the Peace.

171	Accept. Brown, Steese & Clark, due Sept. 30, '89	$5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less interest	32.50	
			4,969.54
Accept.	Brown, Steese & Clark, due Nov. 5, '89.	5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less int	62.50	
			4,939.54
"	Brown, Steese & Clark, due Nov. 5, '89.	5,000.00	
	Protest fees	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less int	62.50	
			4,939.54
	Brown, Steese & Clark, due Nov. 11, '89.	5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of John Metcalf, end. G. P. Brown, less int	66.61	
			4,935.43
"	Brown, Steese & Clark, due Nov. 15, '89.	5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of John Metcalf, end. G. P. Brown, less int	70.00	
			4,932.04
"	Brown, Steese & Clark, due Oct. 10, '89.	5,000.00	
	Prot. fees	2.06	
		5,002.06	
	In favor of J. S. Mackintosh, end. G. B. Brown & G. W. Hollis, less int	41.67	
			4,960.33
"	Brown, Steese & Clark, due Aug. 28, '89.	10,000.00	
	Prot. fees	2.06	
		10,002.06	

	In favor of H. H. Hollis, end. G. P. Brown, less int.	11.67	
			9,990.39
"	Brown, Steese & Clark, due Aug. 17, '89.	5,000.00	
	Prot. fees....	2.04	
		5,002.04	
	In favor of J. S. Mackintosh, end. G. P. Brown & G. W. Hollis; add int....	3.33	
			5,005.37
			$44,672.18
	Credit by dividends from estates of G. W. & H. H. Hollis		4,839.25
			$39,832.93

Claim of International Trust Co. against estate of G. P. Brown may be allowed as per above statement.

R. M. MORSE, JR.,
By M. M.,
For Int. Trust Co.

172 (Endorsed:) (Brown.) 522. Case No. 737. E. Oath of International Trust Co., a corporation creditor, in the case of Brown, Steese & Clarke, insolvent debtors. Filed March 5, 1890. Al. March 18, '91. $39,832.93. G. W. True copy of proof, excepting the notes, etc., used as vouchers. Attest: John D. Cobb, assist. register.

173 (*Copy of Decision. Filed December* 12, 1894.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK. } No. 4867.

Decision.

This case is now before the court on the plaintiff's motions for judgment, to charge various garnishees, to suppress portions of garnishees' affidavits, and to reopen the case after final hearing to allow the plaintiff to summon in new parties. The proceedings have been so long and complicated, attended by exceptions at every step, and the intention of carrying the case to the appellate division has been so frequently avowed, that while, perhaps, no good purpose will be subserved by elaborating the reasons of my decision, yet it does seem that some indication by me of the travel of the case might aid the revising court to a more ready understanding of the matter.

The writ which was issued August 13, 1889, was returnable to the December term, 1889, of the court of common pleas, wherein John A. Cross, of the city and county of Providence, was plaintiff and Gideon T. Brown, of Alston, Edward Steese, and Amasa Clarke,
of Brookline, all in the State of Massachusetts, now or late
174 copartners doing business under the firm name of Brown,
Steese & Clark, were defendants, and it was served on said August 13, 1889, and the two following days by the attachment of certain wool and by trustee process on the Atlantic mills, the Lippitt Woolen Company, the Wauskuck Company, the Riverside and Oswego mills, and on the assignees of said Riverside & Oswego mills under a voluntary assignment for the benefit of creditors made almost contemporary with the service of process on said Riverside & Oswego mills. The said Lippitt Woolen Company, Wauskuck Company, and Riverside & Oswego mills were all corporations organized under the laws of the State of Rhode Island. The suit was to recover amounts alleged to be due upon two promissory notes made by the defendants, Brown, Steese & Clark, at Boston, in the State of Massachusetts, on the 9th day of April, 1889, and the 7th day of May, 1889, respectively, and payable to the order of the International Trust Company at its place of business, in said Boston, and by said International Trust Company, respectively, endorsed and delivered to the plaintiff, the said International Trust Company, being a Massachusetts corporation.

Verdict for the plaintiff was rendered at a jury trial in the court of common pleas at its March term, 1890, in the sum of $41,534.27, and subsequently the defendant's petition for a new trial was denied
by the supreme court. I see no reason why judgment should
175 not be entered on the verdict whenever the plaintiff asks for
it, and, as he has now moved for it, his motion for judgment is granted.

The various parties served with copies of the writ for the purpose of attaching by trustee process the defendants' property in their hands filed disclosures, and no motion has been made in regard to the Atlantic mills, as its disclosure showed no funds. Theophilus King and Bullens and Sawyer respectively filed motions that they might become parties to said action so far as respects the title to the personal estate and might be heard as to the charging of the said trustees therein. King claimed all the personal estate of the defendants in the hands of the Wauskuck Company and the Lippitt Woolen Company and Bullens and Sawyer claimed all the personal estate of the defendants in the hands of the Riverside & Oswego mills, both King and Bullens and Sawyer claiming the same by virtue of assignments thereof to them by William R. Dupee, Weston Lewis, and Samuel P. Colt, as assignees in insolvency under appointment by the court of insolvency within and for the county of Norfolk and State of Massachusetts of the insolvent estate of the firm composed of the several defendants. It was claimed that the insolvent proceedings were voluntary upon the petition of said Steese and Clark, subsequently assented to on the part of said Brown by

appearing and submitting himself to the jurisdiction of the
176 court; that the first publication of the notice of issuing the warrant of insolvency therein was on the 23rd day of August, 1889, and that inasmuch as under the laws of Massachusetts it was provided that the assignment under the proceedings in insolvency should vest in the assignees in insolvency all the property of the debtor which could have been sold, assigned, or conveyed or which might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and should be effectual, subject to certain provisions, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication, as aforesaid, said insolvency proceedings would dissolve the attachments, if made by the International Trust Company, and would pass the title to the insolvent estate in the hands of the garnishees. It was further claimed that the plaintiff in this case, owing to the relations existing between him and the International Trust Company of Boston, stood in no better position than said International Trust Company.

The motions of Theophilus King and of Bullens and Sawyer, founded on the claims as hereinbefore stated, were heard upon testimony and argument at the same time, and by rescripts entered March 6th, 1893, were denied and dismissed for reasons hereinafter
stated. Exceptions having been taken by said King and by
177 said Bullens and Sawyer, time for presenting bills of exceptions was extended, at their request, to five days after the termination of the then current March term, 1893, and on May 10, 1893, bills of exception were presented for allowance. On October 3, 1893, I refused to allow the bills of exception, they, in my opinion, having been prematurely presented, and on the same day, being satisfied I had erred in my rescripts of March 6, 1893, having been under the misapprehension that I had been trying the question of title to the garnisheed property instead of the merely preliminary question as to whether claimants were entitled to be heard upon the question of title, I withdrew those rescripts and permitted the respective claimants to become parties so far as respects the title to said respective personal estates, and the question of title, in my opinion, would properly come up for disposition upon motions to charge the respective garnishees; to which withdrawal of rescripts and allowing the claimants to become parties as aforesaid the plaintiff strenuously objected.

On June 13, 1893, the motion of the assignees of the Riverside & Oswego mills to be discharged as garnishees, after hearing on their disclosures and argument by counsel, was granted.

Upon the plaintiff's motions to charge the Lippitt Woolen
Company, the Wanskuck Company, and the Riverside &
178 Oswego mills, involving questions of title to the personal property, very numerous hearings were had, and the questions raised upon the hearing of the claimants' motions to be allowed to become parties so far as respects the title to the personal property again came up for consideration.

I am of the opinion that the Lippitt Woolen Company must be charged for $11,938.39, the amount disclosed in its affidavit, together with interest thereon, unless, indeed, the insolvency proceedings in Massachusetts and the transfer to the claimant King by the assignees in insolvency have absolved it from liability as garnishee in this suit. I think that after verdict for the plaintiff it is too late for this court to inquire into the relations between the plaintiff and a prior holder of the notes sued upon. I think a transfer to the claimant King from the Massachusetts assignees in insolvency, whose assignment in insolvency vested the insolvents' property in themselves only at the time of the first publication of the notice of the issuing of the warrant of insolvency, to wit, on August 23rd, 1889, being ten days after the garnishment in this suit, could pass no title to the claimant that would take precedence here in Rhode Island over the garnishment.

The Lippitt Woolen Company's amended affidavit, filed January 27, 1894, sets forth that its indebtedness of $11,938.39 to the defendants results from the sale by the defendants to it of certain
179 wool, all the defendants being citizens of Massachusetts and having their only place of business in Boston, in that State, where all of said wool was delivered and where the contract price thereof, viz., $11,938.39, was to be paid, and the said indebtedness, although fixed and definite, had not at the time of the service of process in this action upon said Lippitt Woolen Company become by the terms of said sale, either in whole or in any part, payable, nor did any part of the sale become so payable until September 12, 1889.

The Lippitt Woolen Company's amended affidavit filed June 13, 1893, sets forth that the assignees in insolvency of the defendants began suit in Massachusetts against it for the recovery of the contract price of said wool, viz., $11,938.39, by process dated April 20, 1891, and served the same day by trustee process upon one Hiram Leonard, a debtor in Massachusetts of said Lippitt Woolen Company, and though said Lippitt Woolen Company pleaded in that action the existence of the proceedings in this suit the Massachusetts court rendered judgment against it, but directed execution thereon to be stayed and the parties plaintiff and defendant to file an agreement therefor, and an agreement was entered into by said parties that execution in that suit should not be issued until the suit at bar be determined, all of which fully appears by a copy of said legal proceedings attached to said last-mentioned supplemental affidavit of said Lippitt Woolen Company.

It does not seem to me, however, that the above-recited
180 facts contained in the garnishee's disclosure are sufficient to absolve it from liability under this garnishment. In my opinion the rule of *debitum in presenti, solvendum in futuro*, applies as to the time of payment, and that the plaintiff and the garnishee in this suit being both residents of Rhode Island gives this court jurisdiction and control to the exclusion of the Massachusetts proceedings, and that the Lippitt Woolen Company is chargeable as garnishee herein.

The plaintiff claims that the Lippitt Woolen Company, as garnishee, should be charged with interest on the amount disclosed in its affidavit. In response to plaintiff's questions the Lippitt Woolen Company swore that it had never made any special deposit of the amount disclosed in its original affidavit as due from it to the defendants; that it had never set apart said sum; that it was impossible to state how its use of the money due from it to the defendants had been changed in consequence of the service of the plaintiff's writ upon it; that said Lippitt Woolen Company used all its money as it chose from time to time without distinction; that at the time of the service of the writ in this case upon it its moneys were in various banks and individuals' hands, and has fluctuated in amount from time to time since then according to the necessities of its business.

Upon such a state of facts I am of the opinion that the
181 Lippitt Woolen Company should be charged with interest at the rate of six per cent. per annum from September 12, 1889. See Woodruff *v.* Bacon, 35 Conn., 97, 104; also Drake on Attachment, sec. 665, and cases cited.

The Wauskuck Company's disclosure shows that it had in its hands and possession of the defendants at the time of the service of the plaintiff's writ upon it $28,823.80; that a part thereof, viz., $6,808.23, was the price of 82 bags of wool bought by it of said defendants July 26, 1889, under the supposition that said 82 bags of wool were the property of said defendants; that after the purchase of said wool the Massachusetts Loan & Trust Company of Boston, Massachusetts, notified it that said wool was the property of said Massachusetts Loan & Trust Company and not the property of said defendants; that said defendants had no right or authority to sell the same, and that said Massachusetts Loan & Trust Company would look to said Wauskuck Company for said purchase price thereof, and that said Massachusetts Loan & Trust Company now has a suit in trover pending in this court against said Wauskuck Company for the value of said 82 bags of wool.

Said Wauskuck Company's disclosure also shows that at the time of the service of plaintiff's writ upon it all the property of said defendants in the hands and possession of said Wauskuck Company had already been attached in suits brought against said de-
182 fendants by the Hollis Dressed Meat & Wool Company, the Industrial Trust Company, and the Massachusetts Loan & Trust Company, which suits are still pending, and the aggregate of amounts claimed in said suits exceed the amount of defendants' property in said Wauskuck Company's hands and possession.

The disclosure of the Riverside & Oswego mills shows a very complicated state of affairs existing between said garnishee and the defendants, so that the balance due from said garnishee to the defendants is difficult to fix, and the plaintiff claims that the charging order should be for $140,337.06 (together with interest thereon), but said disclosure also showed that at the time of the service of plaintiff's writ upon it all of the property of said defendants in the hands and possession of said Riverside & Oswego mills had already been

attached in suits brought against said defendant by the Industrial Trust Company and the Hollis Dressed Meat & Wool Company, and the aggregate of amounts claimed in said suits exceed the amount of defendants' property in the hands and possession of said Riverside & Oswego mills.

In my opinion I cannot now enter a charging order against the Wanskuck Company and the Riverside & Oswego mills, for until it shall be ascertained by the disposition of pending suits, wherein said garnishees had been previously served with trustee process,
183 it is impossible for me to determine whether either of said garnishees are, in the words of the statute, "chargeable as the trustee of the defendant, and, if chargeable, to what extent." Jud. act, ch. 34, sec. 18, p. 176. The statute contemplates the possibility of successive attachments of the same property, and that the respective debts or damages of the several attaching creditors shall be satisfied in the order of their respective attachments. Jud. act, ch. 33, sec. 32, p. 170; ch. 34, sec. 1, p. 172. The court in charging a garnishee must determine the amount for which he is chargeable. Jud. act, ch. 34, sec. 18, p. 176. And the execution must have such amount expressed therein. Jud. act, ch. 36, sec. 20, p. 188. Until the amount due upon prior attachments has been determined, there is no way of determining what is applicable under this attachment.

The court suggested this difficulty and offered to hold the case until the determination of the prior attachment suits, but that course was not satisfactory to the plaintiff, who wished the matter to be determined now, so that presumably, if adverse to him, it might be carried to a higher tribunal.

After the close of the final hearing the plaintiff asked to have the case reopened to permit him to make the prior attaching creditors, viz., the Industrial Trust Company, the Hollis Dressed Meat & Wool Company, and the Massachusetts Loan & Trust Company, parties to this action, and on July 14, 1894, the court, by rescript,
184 indicated what its final decision would be. This form of intimation instead of decision being followed at the plaintiff's suggestion to obviate some fancied inconvenience to him in taking the question to the appellate division, the plaintiff's motion to reopen the case for the purpose of making new parties is now formally, as it has been before practically, denied.

The plaintiff's motion, it was stated, was suggested by language used in the appellate division in Hanaford *v.* Hawkins, index N N, p. 58.

An examination of that case, however, does not disclose to my mind such an analogy to the case at bar as to require me to grant the motion unless in my opinion some good purpose would be subserved thereby. In Hanaford *v.* Hawkins it was not even known that the supposed assignee of the garnisheed fund had had any notice of the garnishment, so that he might appear, if he saw fit, and be heard on the question of charging. In the case at bar all the persons sought by the plaintiff to have made parties here are now actually parties to suits in this court, of their own bringing, to de-

termine the very question whether the suits brought by them against the defendants in this case and wherein they have attachments prior to the plaintiff's are good and valid. If those parties should be summoned into this case, then there would be two suits pending to determine the validity of their claims against the defendants, and if in this case those claims should be determined
185 not to be valid and the jury in the cases wherein they have attachments should find that the claims were valid, no authority, it seems to me, would exist in this court to vacate those attachments. The appellate division has said in Cross-petitioner, 17 R. I., 568, that an attaching creditor cannot, to protect his rights under the attachment, intervene in an action brought by a creditor with a prior attachment against the common debtor. If, therefore, the plaintiffs in those cases were summoned into this suit, unless, indeed, this suit was simply continued until the prior attachment suits shall have been determined, this court would practically be permitting to be done by indirection what the appellate division has said cannot be done directly. In the words of Mr. Justice Stiness in Cross-petitioner: "The orderly way in law is for each one to pursue his own rights in his own action, and if in so doing another seeks to circumvent him by fraud the existing remedies are ample."

The question raised by the trover suit of The Massachusetts Loan & Trust Company *v.* The Wanskuck Company as to the validity of a prior pledge is also pending before this court at the instance of the Massachusetts Loan & Trust Company, and the general principle applicable in the case at bar as to the prior attachment suits would also be applicable to the trover suit.

186 Even if bills of interpleader had been brought by the garnishee in this case to compel the plaintiff and the prior attaching creditors to determine their respective claims to the fund under their respective attachments, it seems to me that the court wherein the bill of interpleader was pending would simply hold it until the suits at law in this court had been determined. As before indicated, the court distinctly offered to hold the question of charging the garnishees in this suit where there are previous attachments existing until those previous suits had been determined, which offer was declined. The court also, in its intimation as to what its decision would be on the motion to add parties, most significantly referred to the purpose of the motion to reopen, so that the plaintiff might even then avail himself of any desire on his part to have this suit stand until those suits were disposed of. In my opinion, the question of garnishee's liability in this case, where there are prior attachments, is not ripe for judgment, but if the plaintiff, being of a different opinion, deems the fruit to be ripe and desires to pick it by having final judgment in this court passed upon his claim to charge the garnishees as it now stands, so that if adverse to him he can take the matter to the appellate division, it is his right to do so.

My decision is that the Wanskuck Company and the Riverside and Oswego mills are not properly chargeable as trustees of
187 the defendants. In the last sentence I have used the language of the statute, Jud. act., ch. 34, sec. 18, p. 176, though

the common form of expression is to discharge the garnishees when they are determined not to be properly chargeable; but as a final decision is forced upon the court at this time, it is questionable whether there is any practical difference between a judgment that the garnishee is not properly chargeable and a judgment that he be discharged.

As on account of the existence of prior attachments I cannot charge the Wanskuck Company and the Riverside & Oswego mills, it seems to me it would be only a work of supererogation, leading to no practical result, should I attempt to determine at this time whether said garnishees would be chargeable if said prior attachment did not exist, and hence I have not considered the question.

The plaintiff has moved that certain portions of the affidavits of the garnishees in this case be suppressed and stricken out as immaterial, irrelevant, incompetent, impertinent, and scandalous, and by consent of counsel this motion was to be determined in the final decision. While some of the matter it is asked to have suppressed and stricken out is in my opinion irrelevant, and as such when offered by the claimants as mere testimony was not admitted, but when presented and sworn to by the garnishees in their affi-

188 davits was allowed to be filed, such permission was granted because in the opinion of the court the rights and liabilities of garnishees and claimants are very different. A garnishee is involuntarily summoned in; if he fails to answer fully he does so at the peril of being obliged to pay twice; if he makes a false answer or affidavit he is liable to an action for damages which may result to the plaintiff from such answer or affidavit. The sworn answer of the garnishee shall be considered true in deciding how far said garnishee is liable, though either party to the suit or any claimant of the estate so attached may allege and prove any facts not stated or denied by said garnishee or trustee that may be material in so deciding. While in the case of an ordinary witness testimony deemed by the court to be irrelevant would not be admitted to take up the time of the court, yet in the case of garnishees' affidavits as the matter disclosed is deemed by the garnishee necessary for his protection, it would seem to be the better course to let them stand, and upon consideration of the case to reject irrelevant parts, than to suppress and strike out such parts, as in the former case the appellate division (if the case should be taken up to it) would have the full and undisturbed garnishees' disclosures before it, and could also reject what it deemed irrelevant.

To sum up, then, the court herein decides—

189 That plaintiff's motion to suppress and strike out certain portions of the garnishees' affidavits be denied.

That the plaintiff's motion filed June 12, 1894, to reopen the case for the purpose of making new parties be denied.

That plaintiff have judgment on his verdict.

That the Lippitt Woolen Company is chargeable in this action, as trustee of the defendants, in the sum of $11,938.39, together with interest thereon, at the rate of 6 per cent. per annum, from September 12, 1889.

And that the Wanskuck Company and the Riverside & Oswego mills are not chargeable in this action as trustees of the defendants.

The decision of the court discharging the assignees of the Riverside & Oswego mills, as trustees of the defendants in this action, having already been given, this concludes and completes the final decision of this court in this case.

(S'g'd) HORATIO ROGERS,
J. S. C., C. P. Div.

190 (*Copy Plaintiff's Petition for a New Trial. Filed April* 12, 1895.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division, September Session, 1894.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK. } No. 4867.

And now, after rulings and decisions, comes John A. Cross, the plaintiff in the above-entitled case, and prays that a new trial be granted to him therein, and as grounds therefor alleges that the court erred in its rulings and decisions following, viz:

1. In allowing to be filed and in admitting and receiving each of the supplemental affidavits or disclosures by the several trustees or garnishees in the form and manner and at the times and under the circumstances that they were respectively allowed, admitted, and received, as shown by the record and files.

2. In allowing to be filed and in admitting and receiving the supplemental affidavits or disclosures by the several trustees or garnishees allowed to be filed on January 27th, 1894, without requiring either of them to show any cause or reason for filing them at that late day and without imposing any condition upon their being filed, as shown by the statement of the case.

3. In refusing to admit any testimony under the plaintiff's allegation of facts filed January 27th, 1894, as shown by such statement, and in denying the plaintiff's motion to suppress portions of such supplementary affidavits, and in refusing to go into or hear said motion in detail, as shown by said statement.

191 4. In admitting said Theophilus King and Bullens and Sawyer respectively as claimants of the property attached and as parties to the case upon their intervening petitions filed in the case.

5. In refusing to summon in the prior attaching creditors upon the property in the possession of the trustees.

6. In discharging the assignees of the Riverside and Oswego mills as trustees.

7. In deciding that the Wanskuck Company was not chargeable as trustee.

8. In deciding that the Riverside and Oswego mills was not chargeable as trustees.

9. In each of its rulings in admitting and rejecting evidence and testimony against the objection of the plaintiff as shown upon the statement of the case as allowed and on file.

(S'g'd) By his attorney, JAMES TILLINGHAST.

192 (*Copy of Petition of Lippitt Woolen Co. and Theophilus King for New Trial. Filed April* 11, 1895.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *sc:*
Providence, }

Supreme Court, Appellate Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE, LIPPITT WOOLEN CO., Alleged Trustee; Theophilus King, Adverse Claimant.

Adverse claimant's and alleged trustee's petition for new trial.

In the above-entitled cause, which was heard in the common pleas division of the supreme court, before Mr. Justice Rogers, and wherein a decision was rendered and entered giving judgment for the plaintiff against the defendants and charging the Lippitt Woolen Company, as trustee of the defendants, the said Theophilus King, adverse claimant, and the said Lippitt Woolen Company, alleged trustee, severally and respectively deeming themselves aggrieved by certain directions, rulings, and decisions of the common pleas division of the supreme court in certain matters of law raised by the pleadings or apparent upon or brought upon the record by a statement of the evidence and rulings thereon, respectfully peti-
193 tion this honorable court to grant a new trial and cause such other proceedings to be had therein as to law and justice shall appertain.

And the said Theophilus King, adverse claimant, and the said Lippitt Woolen Company, alleged trustee, severally and respectively referring to the record, to the pleadings, to the affidavits or disclosures of the Lippitt Woolen Company, alleged trustee; to the statement of the evidence and rulings thereon and the files in this cause, and to the final decision of December 12, 1894, set forth specifically the grounds for such new trial, as follows:

(1.) For that on the affidavits or disclosures of the Lippitt Woolen Company, alleged trustee, and on the additional facts duly admitted in evidence the order or judgment of the common pleas division of the supreme court charging the Lippitt Woolen Company, as trustee in this action, was erroneous, the said Lippitt Woolen Company not being so chargeable on the said disclosures and facts, but entitled to a discharge.

(2.) For that the said court erroneously held inadmissible and ruled out the laws of Massachusetts, enacted subsequent to the beginning of this suit, amendatory of said chapter 157 of the Public

Statutes of Massachusetts, duly offered in evidence by the adverse claimant. (Statement of the Evidence & Rulings, pp. 16–18.)

(3.) For that near the close of the trial the said court erro-
194 neously held, ruled, and directed as follows:

"The COURT: The court being of the opinion that the testimony of Mr. Brown referring to the sale of wool to the Lippitt Woolen Company is immaterial in view of the subsequent development of the matters in hearing, the court revises its rulings as to the objections made by plaintiff's counsel thereto and sustains all said objections. The answers to such questions to Mr. Brown as were thus objected to by plaintiff's counsel are stricken out." (Statement of the Evidence & Rulings, p. 29.)

(4.) For that the said court erroneously ruled out as irrelevant and immaterial evidence duly offered by the adverse claimant to show that Mr. Brown's participation in the insolvency proceedings in the case of Brown, Steese & Clarke was voluntary. (Statement of the Evidence & Rulings, p. 30, 31.)

(5.) For that the said court erroneously ruled out as immaterial and inadmissible and as not entitled to full faith and credit with the effect claimed therefor by the adverse claimant as against these garnishment proceedings the duly authenticated record and judicial proceedings of the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts in the case of Brown, Steese & Clarke, insolvent debtors, to wit, of the debtors' petition in
195 said case, dated August 10, 1889, and filed August 12, 1889; of the warrant, dated August 21st, the first publication of the notice of issuing whereof was made on August 23, 1889, and of the assignment to the assignees in insolvency, dated the 4th of September, 1889, all being annexed to the petition of Theophilus King, adverse claimant, and to which reference is hereby made, duly offered in evidence by the adverse claimant as tending to prove and establish the title alleged and claimed by him; also the duly authenticated record of the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts in the same case of the prayer of the assignees in insolvency of Brown, Steese & Clarke for leave to make sale and conveyance of the claims of Brown, Steese & Clarke against the Lippitt Woolen Company and the Wauskuck Company, with the decree of the court thereon, the instrument being undated, but the decree being allowed November 19, 1890, and marked on the back "B" in ink, and the original instrument of sale and conveyance from the assignees in insolvency to Theophilus King, made in accordance therewith, being dated the 19th of November, 1890, and marked on the back "D" in ink, both being among the files in this cause and to which reference is hereby made, each duly offered in evidence by the adverse claimant as tending to prove and establish the title alleged and claimed by him.

(6.) For that the said court in its ruling and decision
196 charging the said Lippitt Woolen Company, as trustee in this action, erroneously held as not entitled to full faith and credit with the effect claimed therefor by the said Lippitt Woolen Company and the adverse claimant the duly authenticated record

of the judgment of the superior court for the county of Suffolk and Commonwealth of Massachusetts, annexed to and made a part of the supplemental affidavit of the Lippitt Woolen Company, and on which the said Lippitt Woolen Company relied as entitling it to a discharge and on which the said adverse claimant relied as merging the debt and establishing his title and exclusive right to enforce the obligation of the Lippitt Woolen Company.

(7.) For that all the right, title, and interest Brown, Steese & Clarke, citizens and residents of Massachusetts, had in the debt of the Lippitt Woolen Company followed the person of the owners and was property in Massachusetts, and hence was submitted by the owners to the jurisdiction of and for administration by the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts by the debtors' petition of August 12, 1889, and passed under the assignment to their assignees in insolvency by the assignment of September 4, 1889, so that the Lippitt Woolen Company was no longer indebted or chargeable on said debt to the said Brown, Steese & Clarke or the garnisher herein suing substantially in the name and right of said Brown, Steese & Clarke.

197 And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the admissibility of the evidence of the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(8.) For that the assignment and transfer of all Brown, Steese & Clarke's right, title, and interest in the credit, being an assignment and transfer of a mere chose in action by and to citizens of Massachusetts, was made and completed in Massachusetts, no notice (of the assignment) to the garnishee to perfect the assignee's title being required either by the law of Massachusetts or of Rhode Island.

And the assignment, being governed by the laws of Massachusetts and valid and effective by those laws, was valid and effective everywhere, at least as to all property except such tangible property as was capable of having an actual situs of its own apart from the owner and actually situated within the jurisdiction and dominion of the State of Rhode Island.

198 And no legal fiction can extend the jurisdiction of the State of Rhode Island to the property of a non resident in a debt which he holds against a resident, at least in the absence of jurisdiction of the person of the owner and as against the jurisdiction of a court having jurisdiction of the owner at his domicile, and consequently of all such property as follows the person of the owner, and can only be affected by a proceeding *in personam* by a court having control of the owner.

And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the

superior court, and as to the admissibility of the evidence of the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(9.) For that the merger of the debt of the Lippitt Woolen Company in the said judgment was, when the said judgment was properly set up in these proceedings in Rhode Island, a complete bar to any order charging the said Lippitt Woolen Company on the said debt as trustee of the principal defendants in this action, the parties being in legal effect the same and bound by such judgment, all claiming under the said Brown, Steese & Clarke and repre-
199 sented by them in the insolvency proceedings in Massachusetts, and the proceedings in the superior court of Massachusetts being supplementary and ancillary in this respect to those in the Massachusetts court of insolvency.

And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the superior court of Massachusetts and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(10.) For that at the time of the alleged attachment in this action, or at any time at or before the assignment in Massachusetts, the obligation of the Lippitt Woolen Company to the principal defendants, citizens and residents of Massachusetts and not subject to the control of the Rhode Island court, was not property within the State of Rhode Island nor subject to the legislative power and control of the State of Rhode Island.

And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the admissibility of the evidence of
200 the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(11.) For that even if the legislature of Rhode Island might, for the purpose of attachment, change the ordinary situs and establish a local situs at the domicile of the debtor within the State for a debt due to a non-resident who is not subject to its jurisdiction or control, the attachment laws of Rhode Island have nowhere declared or attempted to establish any such local situs or to change the ordinary situs of such debts, nor do they purport to authorize an attachment of property which a non-resident has in a debt which he holds against a resident, but only authorizes in general terms an attachment of the property in the hands of the garnishee.

And for that the said court in its rulings and decisions as to the

faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the admissibility of the evidence of the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect
201 so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(12.) For that the said common pleas division of the supreme court never acquired control or jurisdiction of the debt.

(*a.*) The Rhode Island court acquired no control or jurisdiction of the debt, and could have acquired none until on or after September 12, 1889, the debt not being due until that date and being payable in Massachusetts at maturity, so that the principal defendants had and could have had no right of action, nor could the garnishee have made any effective tender in Rhode Island prior to that date.

(*b.*) Before said September 12, 1889, the Massachusetts court of insolvency, having jurisdiction of the *res* of the subject-matter and of the parties affected thereby, had assigned and transferred all Brown, Steese & Clarke's right, title, and interest in the credit, and as the obligation of the Lippitt Woolen Company to said Brown, Steese & Clarke was in effect negotiable under the laws of Massachusetts the Lippitt Woolen Company ceased to be any longer indebted or under obligation to said Brown, Steese & Clarke, and was alone indebted and under obligation to the said assignees in insolvency or to any purchaser from them.

(*c.*) Having submitted the administration of their property to the Massachusetts court of insolvency, the principal defend-
202 ants could not afterwards, by submitting to the jurisdiction of the Rhode Island court, give the latter court jurisdiction over the same property, especially where, as in this case, the Rhode Island court had and could have had no jurisdiction over the property without and independently of such submission; and the principal defendants never appeared or became subject to the jurisdiction of the Rhode Island court until January 7, 1890, long after the date of the assignment of their property to their assignees in the court of insolvency in Massachusetts.

And for that the said court, in its rulings and decisions as to the admissibility of the evidence of the adverse claimant's title, and as to the faith and credit to be given to the duly authenticated records and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the chargeability or non chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(13.) For that the said common pleas division of the supreme court had no power or jurisdiction to affect the debt by garnishment proceedings as against the non-resident creditors to whom due, so long as those creditors were not served with process or sub-

ject to the jurisdiction of the court, and especially as against
203 the Massachusetts court of insolvency, which, by reason of its jurisdiction over the person of those creditors at their domicile, necessarily had jurisdiction over all of their property that, like the property in controversy in this action, was intangible and incapable of having a situs of its own apart from its owner and followed the person of the owners at their domicile, and could be affected only by a proceeding *in personam* by a court having jurisdiction and control of such owners.

(*a.*) As a suit in the nature of a judicial investigation, the said court had no power by the garnishment proceedings to discharge or impair the obligation of the garnishee's contract with a citizen of another State, where the creditor is not within the control of the court, and the Rhode Island statute, if construed to authorize such a proceeding, would be invalid as a statute impairing the obligation of contract.

(*b.*) As a simple attachment of property and a proceeding *quasi in rem*, the said court had no power or jurisdiction to affect the credit or Brown, Steese & Clarke's property in the debt, because the mere pecuniary obligation of a citizen of one State to a citizen of another State not only does not have, but is incapable of having, a situs of its own apart from its owner; and as the obligation of the Lippitt Woolen Company to citizens and residents of Massachusetts was not taxable in Rhode Island, simply because it was not
204 property within the State of Rhode Island or subject to the legislative power of that State, so and for the same reason it could not be made the subject of a proceeding *quasi in rem* in Rhode Island, where, as in this case, until long after the assignment in Massachusetts, the Rhode Island court had no jurisdiction or control over the obligees personally.

And for that the said court in its rulings and decisions as to the admissibility of the evidence of the adverse claimant's title and as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(14.) For that, irrespective of the question of jurisdiction, the Lippitt Woolen Company was never chargeable in respect of its obligation to the principal defendants.

(*a.*) Because the principal defendants had no present right of action in Rhode Island and no right to demand payment of the debt in Rhode Island, the same being payable in Boston, Massachusetts, at maturity, to wit, on or after September 12, 1889.

(*b.*) Because there was not only no present right of action in Rhode Island, but whether the principal defendants would
205 ever have any such right of action in Rhode Island was wholly contingent, and therefore by the law of Rhode Island

not subject to garnishment. Whether the principal defendants would ever have any such right of action in Rhode Island was contingent not only on the failure of the Lippitt Woolen Company to pay in Massachusetts at the time and place of payment, but also on Brown, Steese and Clarke's remaining the owner of such credit on or after such failure. Under the laws of Massachusetts, where the contract was both made and to be performed, and which therefore entered into and formed a part of the contract, this obligation was in effect negotiable and liable, on the happening of a certain event, which in fact happened, to be negotiated by the substitution in the place of the principal defendants of another who could sue and enforce such obligation in his own name and right. As a matter of fact, therefore, no right of action ever accrued to the principal defendants in Massachusetts even, much less in Rhode Island, and the plaintiff could have no greater rights against the garnishee than could the principal defendants if suing.

And for that the said court, in its rulings and decisions as to the admissibility of the evidence of the adverse claimant's title, and as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and
206 of the superior court, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(15.) For that the said court erroneously ruled out evidence duly offered by the adverse claimant for the purpose of and as tending to show that this is not a suit brought in good faith by a citizen of Rhode Island for his own benefit, but that it is colorable only and in the interest, for the benefit, and in behalf of the International Trust Company of Boston, Massachusetts. (Statement of the Evidence & Rulings, pp. 13–15, 33–34.)

(16.) For that the said court also erroneously ruled and held immaterial the facts appearing upon the notes constituting the plaintiff's original cause of action, that said notes were by their terms restricted in the location of presentation and payment to the office of the International Trust Company in Boston, and were secured by collateral there deposited, and were thereby subject to an accounting in respect thereof and as between the parties thereto, and that said International Trust Company, being a citizen of Massachusetts, had made large proofs against the estate of said Brown, Steese & Clarke, insolvent debtors, in insolvency.

207 (17.) For that the said court erroneously ruled out as immaterial and inadmissible evidence duly offered by the adverse claimant as tending to prove and establish the title alleged and claimed by the said adverse claimant, and also evidence of facts not stated nor denied by the alleged trustee that might be material in deciding how far said alleged trustee was chargeable.

(18.) For and on behalf of the Lippitt Woolen Company: For that the said court erroneously ruled and held the said Lippitt

Woolen Company chargeable in this action with interest on said sum of $11,938.39.

LIPPITT WOOLEN COMPANY,
Alleged Trustee,

(S'g'd) By its att'y, W. G. ROELKER.

THEOPHILUS KING,
Adverse Claimant,

By his att'ys, ROBERT W. BURBANK,
(S'g'd) JOHN C. COOMBS,
CHAS. H. HANSON.

208 (*Copy of the Statement of the Evidence and Rulings. Filed March* 29, 1895.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } No. 4867.

Statement of the evidence and rulings.

This is an action of assumpsit. The writ, wherein John A. Cross, of the city and county of Providence, was plaintiff and Gideon P. Brown, of Boston, Edward Steese, and Amasa Clarke, of Brookline, all in the State of Massachusetts, copartners under the firm name of Brown, Steese & Clarke, were defendants, issued August 13th, 1889, and was served in trustee process, on the same day, upon the Lippitt Woolen Company, the Riverside and Oswego mills, and the Wanskuck Company, each a corporation of this State, and on August 15th, 1889, upon the assignees of the Riverside and Oswego mills under a voluntary assignment for the benefit of creditors, and statutory service thereof was made by sending an attested copy of the writ by mail to the address of the defendants.

January 7th, 1890, the defendants appeared and pleaded the general issue, and on trial to the jury, on March 20th, 1890, a verdict was rendered for the plaintiff for $41,534.27.

The defendants filed in the supreme court their petition for a new trial, which was heard there on June 25th, 1890, and denied and dismissed on July 5th, 1890.

These several garnishees made and filed their affidavits or disclosures, and the plaintiff filed interrogatories, to which the
209 garnishees filed answers as appear in the files.

Afterwards and from time to time during and intermediate the hearings in the case upon charging the garnishees each of these garnishees moved for leave to file supplementary affidavits or disclosures, to each of which the plaintiff at the time objected and duly excepted to each of the rulings allowing the filing and receiving the same.

And to those allowed to be filed on January 27th, 1894, the

plaintiff claimed and moved that before being allowed to file them the trustees should be required to show some cause or reason for filing them at that late day; also that, if allowed to be filed at all, it should be upon condition that the trustees be required to submit to examination as witnesses, and, inasmuch as Mr. Chapin, the affiant for the Riverside and Oswego mills, resided out of the State, that a commission should issue to take his testimony as a witness; and the plaintiff duly excepted to each of the court's rulings denying each of these motions.

The plaintiff also, on February 27th, 1894, as required by the court, duly filed in writing his allegations of the facts which he claimed the right to prove upon the questions of how far the trustees were chargeable, and offered testimony and evidence to prove the same and duly excepted to the court's refusal to admit any testimony under these allegations. The plaintiff also, on February 21st, 1894, duly filed his motion to suppress portions of these supplementary affidavits and duly excepted to the court's denial of said motion and refusal to go into the same in detail.

The plaintiff also at the time duly objected to Theophilus
210 King or Bullens and Sawyer being admitted as adverse claimants and to said King and said Bullens and Sawyer being admitted as parties to the suit on the ground that their respective petitions therefor did not set out any valid or sufficient grounds to entitle them to be admitted or heard as such claimants; and the plaintiff duly excepted to the court's rulings admitting them as such claimants and parties.

The plaintiff also, on June 12, 1894, filed his application to reopen the case and to summon in the prior attaching creditors upon the property in the possession of the trustees and duly excepted to the court's denial of such application.

The plaintiff also duly excepted to the court's ruling discharging the assignees of the Riverside and Oswego mills as trustees, and also to its ruling holding that the Wanskuck Company and the Riverside and Oswego mills respectively are not chargeable as trustees in this action.

All of the record and files in said case are referred to as and made a part of this statement.

And the following is a statement of the testimony and other rulings and exceptions in the case:

211 Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE.

(Before his honor Judge Rogers.)

FRIDAY, *December 1st*, 1893.

GIDEON P. BROWN sworn.

(By Mr. DAVIS:)

Q. You were the senior member of the firm of Brown, Steese & Clarke?
A. I was.
Q. During the year 1889, where was your residence?
A. At Boston.
Q. And that of Mr. Steese?
A. At Brookline.
Q. And that of Mr. Clarke?
A. At Brookline.
Q. All in Massachusetts?
A. Yes, sir.
Q. Where was your place of business?
A. At Boston.
Q. Had you any other place of business?
A. I had not.
Q. Where was the place of business of the firm of Brown, Steese & Clarke?
A. At Boston.
Q. Had they any other place of business?
A. No, sir.
Q. Where were the sales of wool to the Lippitt Woolen Company, as to which they have answered indebtedness in this suit, made?

Objected to by Mr. Tillinghast.

A long discussion ensued, occupying the entire day, until the adjournment.

Without ruling upon the question, the court adjourned to Saturday, December 2nd, 1893, at ten o'clock a. m.

Second day.

SATURDAY, *December 2nd*, 1893.

The court came in at ten o'clock a. m.

212 Testimony of GIDEON P. BROWN resumed:

The question the admission of which was under discussion at the time of the adjournment was read as follows:

Q. Where were the sales of wool to the Lippitt Woolen Company, as to which they have answered indebtedness in this suit, made?

Objected to by Mr. Tillinghast as conflicting with the affidavit and as irrelevant and immaterial.

Question admitted.

Mr. Tillinghast takes an exception to the admission of the question.

A. They were made in Boston.

Q. Who made the sales on behalf of Brown, Steese & Clarke?

Same objection by Mr. Tillinghast.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. I made the sales.

Q. And with whom representing the Lippitt Woolen Company?

Same objection by Mr. Tillinghast.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. Owen, Purdy & Co.

Q. With whom did you invariably deal in transactions with the Lippitt Woolen Company?

Objected to by Mr. Tillinghast as immaterial.

Question withdrawn.

Q. Was this a verbal sale?

Objected to by Mr. Tillinghast.

Mr. TILLINGHAST: This was in the State of Massachusetts. It cannot be proved by oral testimony. It requires writing.

213 Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. No, sir.

Q. I will alter the question. Was there any memorandum of the sale made?

Objected to by Mr. Tillinghast as irrelevant and immaterial.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. There was.

Q. What was that memorandum?

Objected to by Mr. Tillinghast.

Mr. TILLINGHAST: They have the English statute of frauds in Massachusetts. They have now shown already that the contract was made in Boston. They must show, therefore, a valid contract in Boston, and that they cannot show by parol. They cannot make a contract in Massachusetts for a large sale like this by parol. It must be in writing.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: Inasmuch as this is a matter of foreign law, I ask now to explain the exception and introduce the statute of Massachusetts, and if this is not admitted—that they have re-enacted

the English statute of frauds—I want to put it in, so that it may go up with the record. I ask leave to base my exception upon and to introduce the Massachusetts statute, unless they agree that that is the statute.

The COURT: I cannot tell what the contract is until I get it.

214 Mr. DAVIS: I am perfectly willing that the statute should be introduced.

Mr. Tillinghast puts into the case the Massachusetts statute of frauds, being section 5 of chapter 78.

Q. What was the memorandum of the sale? What sort of a memorandum was it?

A. It was what we know as a "sale note."

Q. What is a sale note?

Mr. TILLINGHAST: He must produce the note.

Question withdrawn.

Q. What became of those memoranda, if you know?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. I really do not know.

Q. Do you know where they were kept or what would be likely to become of them? Where were they when you last knew of them?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. They were on my desk.

Q. Have you made any search for them?

Objected by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. I have not.

Q. What became of the papers on your desk, Mr. Brown, to the best of your knowledge?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. I never knew.

215 (By Mr. TILLINGHAST:)

Q. When did you leave the city of Boston in 1889?

A. August 6th.

Q. When did you return?

A. The first day of January following or the last day of December.

Mr. DAVIS: The contract as to which I was interrogating Mr. Brown we desire to show was a verbal contract and not a contract in writing. The paper referred to was not a contract for the sale of wool, but a mere memorandum made at the time of the amount of the wool then sold. I now desire to go on with my direct examination of Mr. Brown.

(By Mr. DAVIS:)

Q. I ask you where the wool then sold to the Lippitt Woolen Company was deliverable?

Objected to by Mr. Tillinghast and withdrawn.

Q. What sort of a memorandum was that which you have testified was lost?

Mr. TILLINGHAST: That is to me a little ambiguous as a question. He says that the paper was a "broker's note."

Q. What is a "broker's note"?

A. (Witness attempts to give the form of a broker's note.)

Mr. Tillinghast objects to the question and to the proceeding undertaken by the witness to show by example what a broker's note is.

The court admits the testimony; to which Mr. Tillinghast takes an exception.

Mr. TILLINGHAST: I object, because broker's notes are as different in form as men's wills almost.

216 A. (Gives the form of a broker's note:) "City of Boston (then the month, the day of the month, and the year); sold for account of Brown, Steese & Clarke 200,000 pounds of Montana wool, at 19 cents a pound, to the Lippitt Woolen Company. Terms, 60 days from date of the bill. (Signed) O. N. Purdy & Co."

Mr. Tillinghast objects to the answer as irresponsive, improper, and inadmissible.

Answer admitted and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: May I ask whether that is an answer to the question of the general form of a broker's note, or is it meant to apply to this particular note?

The WITNESS: I did not mean to have it so apply.

Mr. TILLINGHAST: A broker's note certainly does not, in ordinary form, contain the name of the purchaser.

Q. The particulars that you have put into your answer were by way of illustration only?

A. That is all.

Q. Was this memorandum in that form?

A. Very nearly so.

Mr. TILLINGHAST: I object. That is certainly asking the contents of this paper.

Mr. DAVIS: I ask it for form only.

(Question withdrawn.)

Q. What was the form of this memorandum?

Objected to by Mr. Tillinghast.

Mr. TILLINGHAST: You are undertaking to show a trade that is in writing, and you have not shown that you cannot produce the better evidence, to wit, the written document.

217 Q. Was this memorandum made before or after the sale?

A. At the time of the sale, on the day of the sale.

Q. Was this memorandum made before or after the sale of the wool itself to the Lippitt Woolen Company?

Objected to by Mr. Tillinghast.

A. I did not understand the question at all.

Mr. COOMBS: Possibly, dependent upon your honor's ruling, we might feel obliged to ask opportunity to make farther search for the paper; but perhaps it might not be necessary to ask for that delay. I thought we might lead up to it by a question or two, so that we might see.

(By Mr. COOMBS:)

Q. Do you know who made the sales to the Lippitt Woolen Company out of which its present indebtedness to Brown, Steese and Clarke arose?

A. I do.

Q. Did you do it?

A. I think I made two of those sales.

Q. Personally?

A. Yes sir; personally.

Q. And did you know about the others? Did you know about the other sales made to the Lippitt Woolen Company out of which its present indebtedness to Brown, Steese and Clarke grew?

A. Those, if I remember correctly, were samples—samples of lots of wool.

Q. You sold certain samples?

A. Yes sir.

Q. I want to avoid any ground of confusion. By
218 "samples" do you mean that a small quantity is sold, to be followed by a larger order if it proves to be good or satisfactory?

A. For instance, if two bags of wool be picked out of a lot and we know that they are a sample lot, and that is billed, at a price we agree upon, if the wool is satisfactory, the sale is made from that—5 or 10 bags or 10,000 pounds.

Q. But the few bags that are sold first are a sale by themselves, anyhow?

A. I think so.

Q. Now there were some sample sales made in this transaction. Did that sample sale grow to the large transaction that you made yourself?

Objected to by Mr. Tillinghast.

A. Yes sir.

Q. How many transactions were there in the sales to the Lippitt Woolen Company out of which its present indebtedness arose?

A. I think four; possibly five; four, if I remember right.

Q. Would you state how many of them were sample sales and how many were sales of a large quantity of wool?

A. The bills alone would indicate that. Those little, small bills will show that those were the sample lots.

Q. In the sales that were made to the Lippitt Woolen Company you say the bills will show. Is there any entry on the books of Brown, Steese & Clarke concerning the sales?

A. There are bills.

Q. The bills are not entered on the books, are they?

219 A. The bills of the wool?

Q. Do I understand that copies of the bills, as made out to the purchaser, are entered on your books?

A. Yes, sir; a first copy.

Q. Have you got them?

A. They ought to be here.

Q. Were the originals of those press copies sent to the Lippitt mills?

A. Yes, sir.

Q. Can you find them in this letter book which I now hand you?

A. I find one bill here——

Mr. TILLINGHAST: Stop a moment. You need not read it.

Q. You do find copies of such letters?

A. Yes, sir.

Q. Sent to the Lippitt woolen mills?

A. Yes, sir.

Q. In relation to the date of the sales, how are they?

Mr. TILLINGHAST: That is asking the contents of the paper.

Q. In relation to the time of the sales, what are they?

Mr. TILLINGHAST: It does not matter.

Mr. COOMBS: It does matter.

Mr. TILLINGHAST: If you want to offer that letter, offer it and let it be ruled upon.

220 JOHN A. CROSS sworn.

(By Mr. COOMBS:)

Q. What is your age, residence, and occupation?

A. Age, 36; residence, Providence; I am a manufacturer.

Q. You are a manufacturer and a member of a firm or as an individual?

A. In a corporation.

Q. What corporation?

Objected to by Mr. Tillinghast as entirely immaterial.

A. The Valley worsted mills.

Q. What position do you occupy in the mills?

A. Secretary and director.

Q. Are you upon a salary?

Objected to by Mr. Tillinghast as immaterial.

A. Yes, sir.

Mr. Tillinghast moves to strike out the answer.

The COURT: I think that may stand. It shows, as a preliminary matter, who the witness is.

Mr. TILLINGHAST: Only it shows his private affairs.

Mr. COOMBS: I offer to show now, as I offered to show at the hearing when this came up before, that this is not a suit brought in good faith by a citizen of Rhode Island for his own benefit; that it is colorable only and in the interest, for the benefit of, and in behalf of the International Trust Company of Boston. The question on which the argument turned and the ruling of the court was made at the last hearing was this: I said then and I repeat now:

"Q. Now, I don't want to waste time in beating about the bush in this matter. My question is: The time and circumstances of your purchase of these notes on which you bring the suit of
221 Cross against Brown, Steese & Clarke, now at bar." That same question I put to the witness now.

Mr. TILLINGHAST: I object to the question.

(A very long discussion ensued, lasting until the adjournment. At the hearing on Saturday, December 9th, the court ruled out the question, and an exception was taken by Mr. Coombs.)

SATURDAY, *December 9th*, 1893.

JOHN A. CROSS resumed.

(By Mr. COOMBS:)

Q. You are the plaintiff in this case?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. Yes, sir.

Q. Mr. Tillinghast is your counsel, is he not?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. Have you given your counsel in this case any instructions to object to all questions touching your title to the notes sued on in this case?

Objected to by Mr. Tillinghast.

A. I have not.

Q. Have you given him instructions concerning objections to questions in this case?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. Have you any objection of your own, unless it should be raised by your counsel, to state the time and place and cir-
222 cumstances of your acquisition of your title to those notes?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. Do you understand that I have offered to show by you that your title to the notes sued on in this case is colorable only, and that you in reality represent the International Trust Company of Boston as the party in interest in this suit?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. When, if ever, do you claim that you acquired any title to the notes sued on in this case?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. You understand that with both of your notes there appears to be upon the face of them a certain large amount of collateral, do you not?

Objected to by Mr. Tillinghast as not the best proof, inasmuch as this is a matter of record.

A very long discussion ensued.

Mr. COOMBS: We waive the further examination of Mr. Cross here, and will offer the paper record if that is desired.

223 Mr. DAVIS: I will offer the laws of the State of Massachusetts, heretofore referred to and under which, partially, the claimants base their claim. I understand that in this court no farther proof than the prof-er of the laws of another State is necessary, and that the court takes cognizance of them—I mean the statute laws. If not, I shall desire to put them in.

Mr. TILLINGHAST: I object to this as entirely immaterial at the present time.

Mr. DAVIS: I propose to follow this up with an attempt to show proceedings in the Massachusetts court of insolvency and purchase by Mr. King thereunder.

The COURT: It seems to me that it is relevant and material.

Mr. Tillinghast takes an exception.

Mr. DAVIS: I now offer chapter 157 of the public statutes of Massachusetts and acts amendatory thereof, as being the so-called insolvency act of Massachusetts.

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: The acts amendatory thereof are what?

Mr. DAVIS: Here is a copy of the last blue book and the acts and resolves for 1893.

We have first made a general offer of the insolvency law of Massachusetts. The amendatory acts are the act of 1893——

Mr. TILLINGHAST: That I object to. It is the legislation of Massachusetts after this action was brought and cannot affect this case.

224 The COURT: I don't see how laws passed afterwards can affect the matter. I must draw the line at laws in force at the beginning of this suit.

Mr. DAVIS: I offer the Acts of 1890, chapter 420 (objected to by Mr. Tillinghast); 1893, chapter 420; 1893, chapter 372; 1885, chapter

59; 1892, chapter 209; 1887, chapter 340; 1893, chapter 405; 1886, chapter 290; 1884, chapter 293; 1889, chapter 420; 1889, chapter 313; 1890, chapter 420; 1887, chapter 340; 1885, chapter 353, sec. 6; 1884, chapter 236, section 9; 1890, chapter 431; 1893, chapter 405.

The COURT: Now what is the possible relevancy of the amendments made after the commencement of this suit?

Mr. DAVIS: On one phase of our claim, which is that the contracts as to which the garnishees answer indebtedness were made in Massachusetts, with Massachusetts citizens, and they are to be performed and therefore to be governed by Massachusetts laws. We shall submit that it was a condition of that contract, as of all contracts, implied by law, that they were made with reference to Massachusetts statutes and laws and we claim an assignment of that particular indebtedness, claiming title thereto. My offer is, of course, of each and every one of these laws.

The COURT: I think that the laws of Massachusetts prior to the beginning of this suit are admissible; those subsequent to the beginning of this suit are inadmissible. Those prior to the beginning of the suit I rule in and those subsequent to the beginning of this suit I rule out.

Mr. TILLINGHAST: I renew my exception to this ruling,
225 so far as applies to the Massachusetts statutes prior to the suit.

Mr. DAVIS: We save an exception to the ruling out of those subsequent to the beginning of the suit.

Mr. DAVIS: Now we rely particularly upon sections 16, 17, 120, 40, 41, 121, 44, 45, 46, 51, 50, 57, 47, and 109 of chapter 157 of the Public Statutes.

Mr. DAVIS: Now in the additional affidavit of the Lippitt Woolen Company there appears as a part of their affidavit an exemplified copy of the record of a suit in Massachusetts whereof the proceedings in the case of Brown, Steese & Clarke in the insolvency court of Massachusetts, in conformity with the statutes which we have just cited, are a part. If those are already in, and I presume under the statute that they are in, it is not for us to offer proof with regard to them. If they are not in, as to us, then we desire to offer an exemplified copy of the same thing again. I ask your honor's ruling upon whether that is open to us or whether it is in. I should suppose it was in and covered by the affidavit.

The COURT: I don't see why it is not a part of the disclosure. You can offer evidence that does not contradict the disclosure; but where the garnishees' disclosure is already in, I suppose that that is a part. I suppose, therefore, in considering the question of charging the garnishee, we take these disclosures of the various garnishees and such evidence as we may admit as material that is offered outside of the disclosure.

226 Mr. DAVIS: The record of the insolvency court is now a part of the record of the case, then?

The COURT: I so understand it.

Mr. TILLINGHAST: I don't understand that it is in for any other purpose than as a part of the record, for that judgment.

The COURT: You may do, gentlemen, as you see fit. You may offer a new copy, and I shall admit that. If you desire to renew the exception, you can do so.

Mr. COOMBS: We can offer the same thing right over again to cover the point.

(Record of the insolvency court offered.)

Objected to by M. Tillinghast because it is subsequent to this attachment, admitted, and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: I object to it because it is all subsequent to this attachment.

The COURT: I understand that, but I cannot understand whether it is subsequent to the attachment or not until I see it.

Mr. TILLINGHAST: They now offer a record of proceedings in Massachusetts, commenced and taking effect after the attachment. Upon that ground I object to it. This record shows upon its face that it took effect upon the 23d day of August, 1889. The assignment took effect as of that date. They offer the record based upon that proceeding of that court. That is disclosed by the record, and that is what I call your honor's attention to.

Mr. DAVIS: The debtor's petition is dated August 12th.

227 The COURT: Then I don't see how it is material. If you offer it, showing that, then I should rule it out as immaterial.

Mr. DAVIS: The papers that I have offered I want to read, that it may appear upon the record that they are subsequent to this suit. (Reads:) "Brown, Steese & Clarke's, the debtors' petition in the insolvency proceeding, dated August 10th, 1889, in the case Brown, Steese & Clarke, in insolvency, in Massachusetts. Filed August 12th. Citation issued that day, returnable August 21st, on which the order to messenger was dated the 21st of August, 1889, and whereof the first publication was August 23d, 1889."

The COURT: Give me the section of the Massachusetts law.

Mr. DAVIS: There is that section; but that is not our contention in this case. We do not claim that by reason of this assignment an attachment was vacated. We claim that there never was any attachment or anything else.

The COURT: My ruling would have nothing to do with your claim, but it would be upon the admissibility of the testimony.

Mr. DAVIS: The effect of the assignment is stated in section 46: "An assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken upon execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant." The date of the first publication was August 23d, 1889. The assignment itself was of the date of September 4th. That is our offer.

228 Objected to by Mr. Tillinghast.

(A recess was then taken until two o'clock p. m., at which time a very long discussion was had in regard to the admissibility of the

testimony offered. At the conclusion of the discussion the court said:)

The COURT: I have suggested that the offer be made so that it will distinctly show the dates to which I attach importance. I don't see why or how these bankruptcy proceedings in Massachusetts commenced, when they were with the assignment when it was made and the publication of notice when it was made—I don't see what it has got to do with this case. If it goes in I should brush it aside as so much waste paper and say that it has no weight upon my mind. The Massachusetts law I let in because unless I had the Massachusetts law before me I didn't know exactly how to judge of the importance of the acts done under the Massachusetts law; but when it comes to the assignment, having the knowledge of the Massachusetts law that I already have, I say I don't know how that it is material in Rhode Island, and for that reason I exclude it.

Mr. DAVIS: What I have offered is a duly authenticated and exemplified copy of the papers, the debtor's petition, the order, the assignment, &c., in the insolvency court in Massachusetts.

The court rules out the testimony, and an exception is taken by Mr. Coombs.

229 SATURDAY, *January 6th*, 1894.

GIDEON P. BROWN resumed.

(By Mr. DAVIS:)

Q. Since the former hearing, Mr. Brown, have you made search for the memorandum made by Mr. Purdy with regard to the sales from Brown, Steese & Clarke to the Lippitt Woolen Co.?

A. I have.

Q. What search have you made?

A. Well, I went through a large quantity of papers that had reference to that year's business, commencing on the first of the year and going down as far as August. The greater part of the forenoon I occupied in looking those papers over.

Q. What were those papers?

A. They were papers of no value—papers of Brown, Steese and Clarke.

Q. Relating to their business at this period?

A. Yes, sir; for that year.

Q. Did you find any of the memoranda in question?

A. I did not.

Q. You have testified as to the general form of memorandum, such as was made at this time. When was the memorandum signed, in point of time, with reference to the whole transaction of sale?

Objected to by Mr. Tillinghast.

The COURT: I confess I think your search has been inadequate.

Mr. DAVIS: Then I shall have to ask your honor for a ruling——

230 Q. When was this memorandum which was signed by Mr. Purdy made, in point of time, with relation to the transactions involved in the sales?

Mr. TILLINGHAST: I object. He must get the paper and let it speak for itself. It is only an indirect way of proving the contents of the paper. It has been ruled out once.

Mr. DAVIS: I consider the paper as gone.

The COURT: You have not shown a foundation, as it seems to me, to inquire as to the contents of the paper. If you want an exception you can have it. If you want more time to search, the court proposes to give the counsel an opportunity to put any question that the court may think admissible, and to have it answered in the most satisfactory way.

Mr. DAVIS: We shall search everything in the world pertaining to this subject that we can get at.

(Time for further search allowed.)

Mr. DAVIS: Your honor has never ruled on whether there is any need for a search at all.

Mr. COOMBS: Your honor having allowed us an opportunity to cure our difficulty, there has been running through my mind
231 a question that I am not quite satisfied about. I don't know but that your honor's ruling at the last hearing went deep enough to cut up by the root the thing that we are after here. I had an impression of your honor's ruling that the attachment having been prior to the date of the assignment, your honor did not know as any standing was secured to the assignee at all.

The COURT: That is exactly my idea. I have been somewhat surprised that that question has not been raised this morning.

You file a claim, as claimants of this property, claiming by assignment or otherwise, and you ask the right to intervene. The statute gives to persons laying claim by assignment or otherwise the right to be heard on the question of property. The way that was put to me I confess confused me, and the question was argued as though I was to hear the question piecemeal and determine upon your right to be heard upon the question of property, whether you had any substantial claim or not. Now, I think the court was in error, and I frankly say so, and it is an error the court has fallen into before, because our practice is very loose in this respect, and this is one of the cases where it would come up most notably. The court did hear the testimony, but very confusedly, and it did not put its hand down, as I think it should have done and would do again, and say, "You have the right to be heard." We are not going to determine your question of property, or about assignment, until it comes up on the question of charging the garnishees. When that question comes up, then we will hear all the conflicting
232 claims to this property. It is of no consequence whether it comes up on the garnishees' disclosures or whether it comes up on the testimony offered by the claimants. What we are trying now is the question of property. All the court can do anyway is to either charge or discharge the garnishees. If it charges the garnishees, that is an adverse decision to the claimants, by which they might be aggrieved, and then would have the right to go to the higher court. If the court discharged the garnishees, that would be a ruling, so far as this court could make it, in favor of the claim-

ants. The court heard testimony, indeed, but was not then educated up to the case as it has since been presented—for this is a case bringing education to the court and, I think, to the counsel as well. It certainly was very confused before. The court decided against the claimants and denied the motion; but that motion was not what the court intended to decide. The court intended to say that it did not think that Bullens & Sawyer and Theophilus King, under their representation, were entitled to the property in this garnishee process; but the court appeared to say that it declined to hear Bullens & Sawyer and Theophilus King on the question of property; and, that being so, the court withdrew that rescript and said: "Why, it is our duty to hear Theophilus King and Bullens and Sawyer on the question of property;" and that motion will come up when the motion to charge the garnishees is made. The court does not propose to spend a lot of time under a misapprehension.

233 What I mean to say is that, inasmuch as the date of this advertisement and notice was subsequent to this attachment, the insolvency proceedings in Massachusetts had no effect upon this court whatever and did not pass the claim here.

Now that is the broad ground that the court took, and it meant to take it for this reason, that according to its view, as I stated, you gentlemen would then except properly and naturally to the ruling excluding the testimony; and the court was very particular that you should be precise in the question you asked, so that your question should show the transfer from the assignees, under certain insolvency proceedings in Massachusetts, wherein this notice was given in August, several days after the attachment. Now the court attaches some importance at least to that fact, and whatever might be the standing if that notice had been given before this attachment, it was clear that on the notice given subsequent to the attachment this transfer to Bullens & Sawyer and Theophilus King was invalid to pass title.

The court made this remark to you, that it seemed to the court that you were commencing chronologically wrong. It seems to me that you gentlemen are proceeding chronologically wrong, because if this assignment or transfer from the assignees in Boston did not pass title to Theophilus King and to Bullens & Sawyer, of what earthly account is it where this contract was made or anything about it?

Now if you go to the supreme court and they say, "Judge Rogers erred, and he ought to have allowed you to show these things," either they will send it back with instructions for me to hear

234 that testimony, or they will take such other steps as to make it sure that your rights are preserved.

My theory was that I was making up a more clear-cut record for you by refusing to take this testimony, because then you have got a clear-cut decision of the court that, in its opinion, it has nothing to do with the matter.

Then I get to the first starting point, to wit, an assignment. If

they have not got an assignment, of what earthly consequence is all the rest of it? It cuts under your whole case.

Now, when you take these exceptions and carry the case up to the higher court, I cannot for the life of me see why you have not got every remedy.

Mr. COOMBS: If we could have some ruling, either on an offer or in any other way, that would close categorically that part of it from its inception, it might expedite the result.

The COURT: I declined to admit the proceedings and the record of the proceedings in insolvency in Massachusetts because your question was purposely so framed as to show that the notice was advertised subsequent to the date of this assignment; so the insolvency proceedings that I ruled out were identified, so to speak, and described. There was some inquiry made as to the date. I asked him to look it over, and he said, "The date is the 23d or the 24th of August," subsequent to this assignment. That I ruled against, and you took your exception.

Mr. TILLINGHAST: I objected to every question asked of Mr.
235 Brown and took an exception in each instance. The question was asked distinctly as to the record of the insolvency proceedings, and the ruling was made upon that, and that was the end of it. That carries up everything on that matter.

Mr. COOMBS: Do you make a motion to strike out the testimony of Mr. Brown?

Mr. TILLINGHAST: No; I do not. I have as much as I can do to try one side of the case.

Mr. DAVIS: The court has intimated pretty clearly that it could not see any reason why this testimony that we were offering was not included in the ruling upon the insolvency proceedings. We want to show that the contract of indebtedness that the Lippitt Woolen Company offers was part of the contract, and that it should be governed by the laws of Massachusetts, and that complete jurisdiction had not been obtained over this indebtedness by this court at the time of the insolvency proceedings, and that therefore that indebtedness passed under the insolvency proceedings, and we claim title to it under and by virtue of those proceedings. In other words, it antedated the date of the attachment proceedings. Our contention is that at the time the contract was made it was a contract of such a nature that it would follow, as to its ownership, in accordance with the laws of Massachusetts, and that it did so. Now, that is the object of the testimony that was offered with regard to the nature of the contract with that Lippitt Woolen Company—first, that it was made with reference to the laws of
Massachusetts, and next that it was not due and payable;
236 and, it being the case of an absent defendant, there was nothing for the court to take jurisdiction of. At the time of the first attachment in this case, and before any jurisdiction of the defendant was obtained, these insolvency proceedings were taken, under and by virtue of which the original indebtedness passed. That is our contention in the matter, and that is why we desire to go into

the testimony with regard to the circumstances of the Lippitt Woolen Company's contract with Brown, Steese & Clarke.

Mr. TILLINGHAST: I have made objections to the questions asked of Mr. Brown, and I have made them pretty thoroughly, and if I have not objected to every material question I will object to them now and have my objection ruled upon and take exceptions.

Mr. Tillinghast takes exceptions to the admission of all questions put to Mr. Brown except immaterial questions.

The COURT: The court being of the opinion that the testimony of Mr. Brown referring to the sale of wool to the Lippitt Woolen Company is immaterial, in view of the subsequent development of the matters in hearing, the court revises its rulings as to the objections made by plaintiff's counsel thereto and sustains all said objections. The answers to such questions to Mr. Brown as were thus objected to by plaintiff's counsel are stricken out.

Mr. COOMBS: To which the counsel for the adverse claimant objects. I object to the questions being stricken out. I object to the objections of Mr. Tillinghast, and, those objections being sustained, I take an exception.

237 Mr. COOMBS: We would like to ask Mr. Brown where that contract was to be performed and when the wool was to be paid for.

GIDEON P. BROWN recalled.

(By Mr. COOMBS:)

Q. In the sale of wool to the Lippitt Woolen Company, concerning which you have been questioned, where was the wool sold and where was the wool to be paid for?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. When was the contract price or purchase price of the wool payable?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Mr. COOMBS: I offer to prove that the wool was sold in Boston, Massachusetts, and was to be paid for in Boston, Massachusetts, and repeat my question:

Q. Where was the wool sold and where was it to be paid for?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Mr. COOMBS: I offer to show that the price for none of the wool was payable until after the publication of the assignment in the case of Brown, Steese & Clarke; for that purpose I ask:

Q. When was the contract price of the wool payable?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

(By Mr. DAVIS:)

238 Q. Mr. Brown, was your participation in the insolvency proceedings in the case of Brown, Steese & Clarke voluntary or involuntary?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Davis.

(By Mr. DAVIS:)

Q. Were there any other notes of Brown, Steese & Clarke held by the International Trust Company, with collateral attached, similar in their terms to the notes now in suit held by Mr. Cross?

Objected to by Mr. Tillinghast and admitted.

A. I don't know; I can't remember.

Mr. DAVIS: I want to make sure that the record will show that the record of the insolvency court in Massachusetts, which we offered at the last hearing and which your honor excluded, was a duly authenticated record of the court.

The COURT: That is what I meant to rule out, so as to show that the proceedings in bankruptcy that you offered were the proceedings wherein the notice was published and the publication of the notice was after the attachment.

Mr. DAVIS: And that was a duly authenticated record which we offered.

Mr. DAVIS: I offer a duly exemplified and authenticated record of the insolvency court of the county of Norfolk, of the Commonwealth of Massachusetts, of the debtor's petition and citation in the case of Brown, Steese & Clarke, insolvent debtors, filed August 12th, 1889; of the warrant in the same case, with the return thereon; of the assignment in the same case to the assignees, dated the
239 4th of September, 1889, all being annexed to the petition of T. King as adverse claimant.

Objected to by Mr. Tillinghast, ruled out, and exception taken by Messrs. Coombs & Davis.

Mr. DAVIS: We now offer a conveyance by the assignees in insolvency of Brown, Steese & Clarke, in Massachusetts, to Theophilus King of the claims of Brown, Steese & Clarke against the Lippitt Company and the Wanskuck Company, and also the sale by the same assignees to Messrs. Bullens & Sawyer, trustees for the purchase of the claim of Brown, Steese & Clarke against the Riverside and Oswego mills, under which these respective adverse claimants claim title to the property here garnished, offering both the duly authenticated and exemplified copy of the record of the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts, of the prayer of the assignees in insolvency of Brown, Steese and Clarke for leave to make this sale, with the decree of the court thereon, and the instruments: that as to the sale to Bullens & Sawyer being allowed November 19, 1890, and marked on the back "A" in ink; that to Theophilus King being undated, but the decree

being allowed November 19th, 1890, and endorsed on the back "B" in ink, and the original instruments of conveyance from the assignees in insolvency to Bullens & Sawyer and Theophilus King made in accordance therewith; that to Bullens & Sawyer being marked on the back "C" in ink and dated the — day of ——, 1890, and that to Theophilus King being dated the 19th of November, 1890, and marked on the back "D."

240 All objected to by Mr. Tillinghast, ruled out, and exception taken by Messrs. Coombs and Davis.

Mr. DAVIS: I offer the authenticated and exemplified record of the court of insolvency of the county of Norfolk, Commonwealth of Massachusetts, of the proof of claim made in the case of Brown, Steese & Clarke by the International Trust Company of Boston, it being in two proofs, the first being sworn to May 29th, 1890, and the second sworn to March 3d, 1890, marked "E" in red ink.

Admitted and put in.

JOHN A. CROSS recalled.

(By Mr. COOMBS:)

Q. Were you aware that under the laws of Massachusetts the negotiable life of a note payable on demand is 60 days?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Mr. TILLINGHAST: I object to the form of the question as well as the substance. We cannot incorporate the law of Massachusetts in that way, and I do not assent to its being the law of Massachusetts. I object to the question on the ground that it assumes something to be the law of Massachusetts which is not in proof and not admitted, and also because it is immaterial and inadmissible in this case.

Q. In one of these notes, dated May 7th, 1889, it purports to contain collateral in two notes, one reading "Note, Atlantic, May
241 7th, four months, $10,000," and endorsed "Owen Brothers," and also, in ink, right under that, "Note, Atlantic, April, five months, $10,000." Did you receive that collateral with that note?

Objected to by Mr. Tillinghast and admitted.

A. I did not.

Q. The other note, dated April 9th, 1889, being for $20,000, purports to be secured by business paper—Hollis, $10,000; Phenix Wool Company, $7,636.63; Philbric, $2,500; McIntosh, $5,000. Did you receive that collateral with that note?

A. I did not.

Q. Did you ever hold any promissory notes of Brown, Steese & Clarke before these?

Objected to by Mr. Tillinghast as immaterial, ruled out, and exception taken by Mr. Coombs.

Allowed March 29, 1895.

(S'g'd) HORATIO ROGERS,
J. S. C., C. P. Div.

242 (*Copy of Certified Copy of Opinion of Appellate Division. Original Opinion Filed in Appellate Division October* 28, 1895; *Certified Copy Filed in Common Pleas Division October* 1, 1897.)

JOHN A. CROSS
v.
BROWN, STEESE & CLARKE.

Opinion.

TILLINGHAST, *J.*:

This is assumpsit upon two promissory notes made by the defendants at Boston, in the State of Massachusetts, on the 9th day of April, 1889, and the 7th day of May, 1889, respectively, and payable to the order of the International Trust Company, at its place of business in said Boston, and by said International Trust Company endorsed and delivered to the plaintiff. The said International Trust Company is a Massachusetts corporation.

The writ, wherein John A. Cross, of Providence, was plaintiff and Gideon P. Brown, of Boston; Edward Steese, and Amasa Clarke, of Brookline, all in the State of Massachusetts, copartners under the firm name of Brown, Steese & Clarke, were defendants, was sued out of the court of common pleas in the county of Providence August 13, 1889, and was served by trustee process on the same day upon the Lippitt Woolen Company, the Riverside & Oswego mills, and the Wanskuck Company, each being a corporation of this State, and was also further served on August 15, 1889, by trustee
243 process upon the assignees of said Riverside & Oswego mills, and by sending a copy of the writ by mail to the address of each of the said defendants. At the time of the commencement of said suit and of the insolvency proceedings hereinafter mentioned, the defendants, Brown, Steese & Clarke, were creditors of said Lippitt Woolen Company, the Riverside & Oswego mills, and the Wanskuck Company. The indebtedness of the Lippitt Woolen Company was on a contract for the sale of wool, made in Boston, where the wool was delivered and where the purchase price for the same was payable when it should become due. At the time of the alleged garnishment, however, said indebtedness had not become due and payable and did not until September 12, 1889.

Subsequent to the service of said writ on the Riverside & Oswego mills, but on the same day, this corporation made a general assignment of all its property to Charles D. Owen, of Rhode Island; Chester A. Braman, of the city and State of New York, and James B. Case, of Webster, in the State of Massachusetts, in trust for the equal benefit of all its creditors, excepting its employees, the wages of whom for labor performed within six months prior to said assignment, not exceeding, however, the sum of one hundred dollars to any one person, were preferred. January 7, 1890, the defendants appeared and pleaded the general issue, and on trial to a jury, on March 30, 1890, a verdict was rendered for the plaintiff for $41,534.27,

which verdict this court, on a petition for a new trial, subse-
244 quently filed, refused to disturb. Said Brown, Steese & Clarke failed in the early part of August, 1889, and on the 12th of the same month two members of the firm applied by a voluntary petition to the judge of the court of insolvency in and for the county of Norfolk, Massachusetts, setting forth their inability to pay all their debts and their willingness to assign all their estate and effects for the benefit of their creditors, and praying that such proceedings might be had as were provided by cap. 157 of the Mass. Pub. Stat., viz., the insolvency laws of that State.

Sec. 46 of such chapter provides as follows: "The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate."

245 The first publication of notice of the insolvency proceedings referred to was made on August 23, 1889, and on September 4, 1889, the assignment was made by the judge of insolvency under the provisions of said law. No assignment was made by the insolvents themselves.

The assignees of Brown, Steese & Clarke, by virtue of the assignment to them, as aforesaid, and of the provisions of said insolvency laws of Massachusetts, duly purported to sell and assign the claims of said firm against the Lippitt Woolen Company and the Wanskuck Company to Theophilus King, a citizen and resident of Massachusetts, who, as shown by the duly authenticated record, as such purchaser and under and by virtue of § 109 of said cap. 157 of the Mass. Statutes, brought suit in his own name in that State against the Lippitt Woolen Company on its obligation under said contract, setting forth the fact of the sale and of the purchase by him in the writ, and recovered judgment against the Lippitt Woolen Company, notwithstanding said company appeared and fully set out in said proceedings the garnishment proceedings in the case now before us.

Under and by virtue of cap. 433 of the Pub. Laws of R. I. the said King was allowed to become a party to this action as adverse claimant, which he did, setting up the insolvency laws and proceedings thereunder in Massachusetts and the assignment to him thereunder as aforesaid, and also setting up his judgment against the Lippitt Woolen Company. He also offered to show that this
246 is not a suit brought in good faith by a citizen of Rhode Island for his own benefit, but that it is colorable only and

in the interest, for the benefit, and in behalf of the International Trust Company of Boston. Bullens & Sawyer were also allowed to become a party to the suit as the claimant of all the property and estate of the defendants in the hands of the Riverside & Oswego mills, they claiming said property by virtue of an assignment to them from the assignees in insolvency in Massachusetts of said Brown, Steese & Clarke.

The various parties served with copies of the writ, for the purpose of attaching by trustee process the defendant's property in their hands, filed disclosures in said court of common pleas and in the common pleas division of the supreme court, which took cognizance of the case after the passage of the judiciary act, which disclosures will hereinafter be considered; numerous interrogatories and cross-interrogatories were filed and answered in connection therewith; said claimants of the property attached were fully heard, and the case as a whole was tried at great length, and finally, after diligent consideration thereof by Rogers, J., presiding in said division, a decision was rendered charging the said Lippitt Woolen Company, as garnishee, in the sum of $11,938.39, the same being the amount disclosed in its affidavit, together with interest thereon from September 12, 1889, and declining to charge the other garnishees. The case is now before us on two petitions for a new trial, one being
247 filed by the plaintiff and one by the said Lippitt Woolen Company, trustee, and Theophilus King, as adverse claimant.

The plaintiff's petition is based upon certain alleged erroneous rulings of the court in regard to the admission and rejection of evidence; in the admission of supplemental affidavits or disclosures by the garnishees; in admitting said Theophilus King and Bullens & Sawyer respectively as claimants of the property attached and as parties to the case, upon their intervening petitions therein filed; in refusing to summon in the prior attaching creditors of the property in question; in declining to charge the assignees of the Riverside & Oswego mills as trustees, and in declining to charge the Wanskuck Company and the Riverside & Oswego mills as garnishees.

The numerous grounds of the petition of said Lippitt Woolen Company and of Theophilus King, adverse claimant, for a new trial, briefly stated, are that the common pleas division erred in charging said Lippitt Woolen Company, as trustee, and, even if chargeable at all, in charging it with interest on the amount disclosed; in its rulings as to the admission and rejection of evidence, and in its rulings and decisions as to the faith and credit to be given to the record and proceedings of the Massachusetts court of insolvency, and also of the superior court of that State. We will consider both of said petitions together.

248 The first question which logically presents itself in connection with the petition for a new trial, filed by said Lippitt Woolen Company and said claimant, is that of jurisdiction over the fund or property in question, for it is clear that jurisdiction over the principal defendants was obtained by their voluntary appearance in the case. The answer to this question depends upon the

situs of the property sought to be attached. If it was in this State, as contended by the plaintiff, the court obtained jurisdiction; but if it was in Massachusetts, as contended by the Lippitt Woolen Company and the claimant, then the court did not obtain jurisdiction, for it is an elementary principle of law that jurisdiction, to be rightfully exercised, must be founded upon the presence of the person or thing in respect to which the jurisdiction is exerted within the territory. Plympton *v.* Bigelow, 93 N. Y., 597.

In order to make a valid seizure, then, by process of attachment, whether of tangible or intangible property or interest, the *res* must be within the territorial jurisdiction—that is, if the *res* consists of visible and tangible property, it must be found and seized within the State, and if it consists of a mere debt or chose in action, then its situs must be there.

Now it is evident that a chose in action, being an intangible chattel, cannot, strictly speaking, have a physical location. Its locus or situs is, therefore, a legal fiction, and, being so, it
249 may have a different situs for different purposes—that is, a constitutional situs. Thus, the situs thereof for the purposes of taxation is the domicile of the creditor or payee of the debt. For the purposes of administration, so far as the non-resident creditor is concerned, it is also at his domicile; but, so far as the remedy of the creditors of the payee of the debt is concerned, the authorities are very uniformly to the effect that the situs of the debt is at the domicile of the debtor, and that wherever the creditor might maintain a suit to recover the debt, there it may be attached as his property, provided the laws of the forum authorize it; or, as said by Shiras, J., in Mason *v.* Beebe, 44 Fed. Rep., 559, "The situs of property for the purpose of jurisdiction is one thing, and its situs for the purposes of determining the right of the parties thereto is another, and the two are not necessarily the same."

In a late case decided by the supreme court of Minnesota this doctrine is thus concisely stated by Mitchell, J.: "While by a fiction of law a debt, like other personal property, is for most purposes, as, for example, transmission and succession, deemed attached to the person of the owner, so as to have its situs at his domicile, yet this fiction always yields to the laws for attaching the property of non-residents, because such laws necessarily assume that the property has a situs distinct from the owner's domicile. For such purposes a debt has a situs wherever a debtor or his property can be found. Wherever the creditor might maintain his suit to recover the
250 debt, there it may be attached as his property, provided, of course, the laws of the forum authorize it." Harvey *v.* Great Northern R. W. Co., 50 Minn., 406; Blake *v.* Williams, 6 Pick., 285–315; Lewis *v.* Bush, 30 Minn., 247; Drake on Attachm., § 597. In Neufelder *v.* Insurance Co., 22 L. R. A., 290, the court say: "Although the situs of intangible personal property may be at the domicile of the creditor for the purpose of taxation or distribution, yet for the purpose of collection a debt is ambulatory and accompanies the person of the debtor." While, therefore, it is a general rule that personal property follows the person of the owner and is

governed by the laws of his domicile, yet this rule is subject to certain exceptions, and one of these exceptions is that the *lex rei sitæ* regulates the legal remedy. Blanchard *v.* Russell, 13 Mass., 5.

Attachment laws, as said in Green *v.* Van Buskirk, 7 Wall., 139, "necessarily assume that property has a situs entirely distinct from the owner's domicile." The plaintiff occupies, as against the garnishee, the position of the defendant, with no more rights than the defendant had, and liable to be met by any defence which the garnishee might make against an action by the defendant. See also Strong *v.* Smith, 1 Met., 476; Campbell *v.* Nesbitt, 7 Neb., 300; Drake, Attachm., 6 ed., 452.

If this be so, and we see no reason to doubt its correctness, it follows that as the defendants Brown, Steese & Clarke could have maintained an action against the garnishees in this State for
251 the recovery of the debts in question, then said debt was within this State and subject to an attachment here. See also Bragg *v.* Gaynor *et als.*, 85 Wis., 468; Wyeth Hardware Mfg. Co. *v.* Lang *et al.*, 29 S. W. Rep., 1010; Berry Bros. *v.* Davis, 77 Tex., 191; Harwell *v.* Sharpe, 85 Ga., 124; Hull *v.* Blake, 13 Mass., 153; Insurance Co. *v.* Portsmouth, 3 Met., 420; Nat. Fire Ins. Co. *v.* Chambers *et al.*, 32 Atl. Rep., 663; Mason *v.* Beebe, 44 Fed. Rep., 556; H. & St. J. R. R. Co. *v.* Crane, 102 Ill., 258.

Nor is it material in a proceeding of this sort, where the creditor's remedies are concerned, that the debt is payable at the domicile of the payee, it being well settled that "where the garnishee is indebted it will not vary his liability that his contract with the defendant is to pay the money in another State or country than that in which the attachment is pending." Drake, Attachm., 597, and cases cited.

The debt of the garnishee to the defendants in the case at bar, although payable in Massachusetts, was yet a debt everywhere—in whatever country its person or property might be found—and hence a suit for the recovery thereof, as we have already said, could have been prosecuted in the courts of this State. See Sturtevant *v.* Robinson, 18 Pick., 175; Nichols *v.* Hooper, 61 Vt., 295; Leiber *v.* Railroad Co., 49 Ia., 668.

The counsel for the said garnishee and claimant, while they have not furnished us with much judicial authority to the contrary of the foregoing doctrine, have presented a very elaborate and
252 learned argument in support of their contention that said debt or pecuniary obligation could not be made the subject of a proceeding *quasi in rem* in this State, (*a*) because it had no situs at the domicile of the debtor and was not property here over which the legislature and courts of this State had dominion and control, and (*b*) because if it had been property here the court could not have discharged the debt as against the non-resident owners not personally subject to the control and jurisdiction of the court without impairing the obligation of contract.

In support of their contention that the situs of the debt was not here, but was at the domicile of the payees thereof, counsel have cited and elaborated numerous cases on taxation, both in the State

and Federal courts, which hold with great unanimity that, for the purposes of taxation, personal property of the kind in question follows the person and has its situs at his domicile, and that only the tangible property of a non-resident is subject to the taxing power of a State, and they earnestly argue that these cases are directly in point and decisive of the question at issue, the sovereign power of a State being best illustrated and most accurately defined by cases on taxation.

It is undoubtedly true that the jurisdiction of the State for purposes of taxation cannot be held to extend to the property which a non-resident has in a debt which he holds against a resident. For, as said by Judge Cooley, in his valuable work on taxation, "the State has no jurisdiction to assess a tax as a personal charge
253 against a non-resident; neither can the personal estate of a non-resident be taxed unless it has an actual situs within the State, so as to be under the jurisdiction of its laws. The mere right of a foreign creditor to receive from his debtor within the State the payment of his demand cannot be subjected to taxation within the State. It is a right that is personal to the creditor where he resides, and the residence or place of business of his debtor is immaterial. The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. The subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though, as applied to them, the taxation may be exercised in a great variety of ways. * * * The creditor cannot be taxed, because he is not within the jurisdiction, and the debts cannot be taxed in the debtor's hands, through any fiction of law which is to treat them as being, for this purpose, the property of the debtors. They are not property of the debtors in any sense; they are the obligations of the debtors, and only possess value in the hands of the creditors." Cooley on Taxation, 2 ed., 21, '2.

But, conceding that the State has no power to tax a mere chose in action belonging to a non-resident, does it therefore follow that it cannot authorize an attachment thereof by process of garnish-
254 ment; or, in other words, may not the debt, which is an intangible thing, have a situs at the domicile of the creditor for the purpose of taxation, and also at the domicile of the debtor for the purpose of attachment? We see no reason why it may not, and the authorities above cited, together with many others which might be added, fully support the view that it may. Moreover, for us to hold that a debt due to a non-resident is not attachable by trustee process here would be both to render our statutes relating to foreign attachment largely null and void and also to overrule the settled practice of the court from time immemorial. Indeed, until a comparatively recent date, an action could not be commenced by garnishment unless the defendant was out of the State. Cottle *v.* Am. Screw Co., 13 R. I., 627.

But the counsel for said trustees and said claimant further urge,

in support of their contention that said statute is unconstitutional, that the statute of the State, being without force in any other State, cannot discharge a debt held by a citizen of another State; and in this connection they have referred us to numerous cases bearing upon the question of the effect of discharges in insolvency under State insolvency laws.

The general doctrine for which counsel contend is this: That the insolvency laws of one State have no effect against the citizens of another State holding claims that follow the person of a creditor, no matter where the debt was contracted or where it was made payable, unless they place themselves under the jurisdiction of the
255 law by voluntarily becoming parties to the insolvency proceedings.

That the statute laws of a State can have no extraterritorial operation or force is everywhere admitted, for it goes without saying that, each State being an independent sovereignty, subject only to the limitations of the Constitution of the United States, no State can legislate with regard to the rights of citizens of another State except and in so far as such citizens or their property are found within the territorial limits of the State where the law is passed. See Gilman *v.* Lockwood. 4 Wall., 409; Denney *v.* Bennett, 128 U. S., 489; Green *v.* Sarmiento, 10 Fed. Cases, 1117.

We fail to see the pertinency of this doctrine, however, to the case before us, for here, as we have already seen, the debt sought to be affected is within the jurisdiction of this court. The *res* is here, and this is a proceeding *quasi in rem* to reach and appropriate that *res* to the payment of the judgment debt of the defendants. In a word, it is compelling the payment of the defendants' debt out of their property found in this State.

As to the second point made by the counsel for said trustees and the adverse claimant, viz., that if the debt was property here the court could not discharge it as against the non-resident owners thereof not personally subject to the jurisdiction of the court without impairing the obligation of contract.

The position thus taken, as we understand it, amounts to
256 this, viz., that our statute which provides that "any trustee, after final judgment or decree against the defendant, may satisfy such judgment or decree, or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor; and such payment shall avail for his discharge as against both plaintiff and defendant for the amount thereof," is unconstitutional in so far as it affects debts due to non-residents, in that it deprives the owners of their property in the debt without due process of law.

But what is due process of law except the observance of those general rules established in our system of jurisprudence for the security of private rights, *i. e.*, a trial or proceeding in which the rights of the parties, after notice and opportunity to be heard shall have been duly given, shall be decided by a tribunal appointed by law and governed by the rules of law previously established? Kilburn *v.* Thompson, 193 U. S., 78; Hagar *v.* District, &c., 111 U. S., 708.

For, as forcibly stated by Mr. Webster in the famous Dartmouth College case, "By the law of the land is most clearly intended the general law—a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."

A valid attachment by trustee process creates a lien upon the debt in the hands of the trustee in favor of the attaching creditor. Blake *v.* Williams, 6 Pick., 303. See also Eddy *v.* O'Hara,
257 132 Mass., 56; McConnell on Trustee Process, § 297, and cases. And where such trustee is compelled by due process of law to pay a debt due to A, his creditor, to B, a creditor of A, who had thus attached it in his hands and possession, such payment operates as a full discharge of the debtor's liability to the extent of the amount paid, and is everywhere pleadable in bar of any suit which the creditor might subsequently bring for the recovery of such debt. As said by this court in Alves *v.* Barber, 17 R. I., 714, regarding the effect of a judgment charging the garnishee, "It practically divested the title of the defendant in that suit, the present plaintiff, to the money in the hands of the trustee and transferred it to the plaintiffs, so that in legal contemplation it was applied to the payment of the plaintiffs' judgment against the defendant, the trustee being authorized to pay it over to the plaintiffs and be discharged as against both plaintiffs and defendant for the amount so paid." See also Abbott *v.* Davidson, Index L. L., 84. Indeed, it has been held that where there is a subsisting judgment against a trustee it constitutes a good defence for him in an action by his principal against him for the same cause of action without proof of satisfaction. See McAllister *v.* Brooks, 22 Me., 80, and cases cited.

A chose in action is arrested by this process of garnishment and made to answer the debt of the principal.

But how does our statute above quoted relating to the discharge of the debt due from the garnishee to the principal defend-
258 ant impair the obligation of contract? And in this connection it may be useful to inquire what the contract in question was. It was this: The principal defendants sold and delivered wool in Boston to the Lippitt Woolen Company, the payment thereof to be made in Boston. Before the time for payment had arrived the plaintiff attached the debt by trustee process and is seeking to compel payment thereof to him as a creditor of the principal defendants, instead of making such payment to them—that is, he is seeking in effect by operation of law to transfer the indebtedness of the trustees from the principal defendants to him. Now, suppose that to be done, as it practically is when the trustee proceedings are regular, and a judgment is obtained against the trustee for the amount of the debt in his hands, is it not perfectly obvious that a satisfaction of that judgment *ipso facto* discharges the obligation of the trustee, who is the debtor, to the principal defendants? The judgment, if binding on the trustee, is also binding on the principal defendants and all parties in privity with either, and the satisfaction of the judgment against the trustee is an extinguishment of his debt to his principal creditor and has precisely the same effect as if it were paid to the creditor directly. As stated in Wade

on Attachment, vol. 2, § 503, "The question to be determined is whether the debt has been satified and the extent of such satisfaction, and it matters not by whom it has been paid nor to whom
paid, provided it be to one who is entitled to receive it from
259 the one who pays it; hence where one of several joint debtors
in the garnishment proceeding has paid the debt for which the judgment was obtained it will be for the benefit of his codebtors, each of whom may rely on it as a defence to a subsequent action by the original creditor."

Said statute, then, in so far as it provides that the trustee, after final judgment against the defendant, may satisfy the same, and that the payment thereof shall discharge him from his debt to the principal defendant, is simply declarative of the legal status of the parties to the contract out of which the original indebtedness arose after such change of title to it has been affected by the process of garnishment, and it bears no analogy to the provision for the discharge of a debtor under State insolvency laws as affecting non-resident creditors. In other words, it is not the statute which discharges the debt due from the trustee to the principal defendants at all, but it is the payment of the debt to the attaching plaintiff in satisfaction of his judgment against the principal defendants. This is what works a discharge of the debt. See McConnell on Trustee Process, §§ 295–'7 & 483, and cases cited. And if it be an impairment of the obligation of contract in this case to compel the debtor to pay the debt in question to the attaching plaintiff instead of to the principal defendants, to whom the contract made it payable, and upon such payment to be discharged from its obligation to the said defendants as to the amount so paid, then we do not see why
all foreign attachment laws whereby a debtor is compelled to
260 pay a debt due to a non-resident creditor to the attaching
plaintiff in a proceeding of this sort are not unconstitutional and void.

In the leading case of Embree *et al. v.* Hanna, 5 Johns., 101, Chief Justice Kent said: "Nothing can be more clearly just than that a person who has been compelled by a competent jurisdiction to pay a debt once should not be compelled to pay it over again. It has accordingly been a settled and acknowledged principle in the English courts that where a debt has been recovered of the debtor under this process of foreign attachment in any English colony or in these United States the recovery is a protection in England to the garnishee against the original creditor and he may plead it in bar."

* * * * * * *

"If, then, the defendant would have been protected under the recovery had by virtue of the attachment and could have pleaded such recovery in bar, the same principle will support a plea in abatement of an attachment pending and commenced prior to the present suit. The attachment of the debt in the hands of the defendant fixed it there in favor of the attaching creditors, and the defendant could not afterwards lawfully pay it over to the plaintiff. The attaching creditors acquired a lien upon the debt binding upon

the defendant and which the courts of all other governments, if they recognize such proceedings at all, cannot fail to regard." See also Jarvis *v.* Mitchell, trustee, 99 Mass., 531.

261 But the counsel for said Lippitt Woolen Company further contend that, even if the legislature of this State might, for the purpose of attachment, change the ordinary situs and establish a local situs at the domicile of the debtors within the State for a debt due to a non-resident who is not subject to its jurisdiction or control, the attachment laws of the State have nowhere declared or attempted to establish any such local situs or to change the ordinary situs of such debts, nor do they purport to authorize an attachment of property which a non-resident has in a debt which he holds against a resident.

It is true that we have no statute which in express terms authorizes an attachment against a non-resident, but we think there can be no question that our attachment laws are broad enough to include attachments of this sort. § 14, cap. 32, of the judiciary act provides that "An original writ commanding the attachment of the real or personal estate of the defendant, including his personal estate in the hands or possession of any person, copartnership, or corporation, as the trustee of the defendant, and his stock or shares in any banking association or other incorporated company, may be issued from the common pleas division of the supreme court or any district court, whenever the plaintiff in the action to be commenced by such writ, his agent or attorney, shall make affidavit," &c. § 20, cap. 33, provides for the manner of service of the writ, including the service upon a non-resident defendant, and § 2 of cap. 19 of said act

262 provides for the continuance of a case commenced by foreign attachment where the defendant is a non-resident and fails to answer within the regular time limited therefor. With these provisions in view, taken in connection with the settled and heretofore unquestioned practice of the court thereunder, it is hardly necessary to argue in favor of the authority to attach a debt due to a non-resident.

Another question and one of vital importance is raised by the counsel for said Lippitt Woolen Company and for the claimant King, viz., as to the effect of the said insolvency proceedings in Massachusetts. It is strongly urged that the rulings of the common pleas division fixing August 23, 1889, the date of the first publication of notice in said proceedings, as the date decisive of the question of the effect on the debt in question of the Massachusetts assignment are erroneous. The contention is that by filing the voluntary petition, hereinbefore referred to, on August 12th (one day before the issuing of the writ in this action) the defendants submitted themselves and their property to the jurisdiction of the court of insolvency at that time.

The first inquiry which logically arises regarding this branch of the case is, Did this court or the Massachusetts court first obtain jurisdiction of the debt in question? for it is undoubtedly the law that whichever first obtained general jurisdiction will hold the same

to the exclusion of the other. Under the Massachusetts
263 statute hereinbefore quoted the insolvency proceedings date from the first publication of notice. The notice in the proceedings instituted by the defendants was first published on August 23, 1889, but ten days prior to that time, viz., August 13, 1889, the said debt had been attached here, and our courts had thereby obtained jurisdiction over it.

But the counsel still further urge that, even conceding that the date of the assignment itself, which was September 4, 1889, is the date which is to be decisive on the question of jurisdiction, still the Massachusetts court first obtained it, because, in so far as said debt was property, it was property exclusively within the dominion and jurisdiction of the legislature and courts of Massachusetts. As we have already decided that this position is not tenable, we need not consider it further; but, independent of the fact that the attachment preceded the first publication of notice, and also the making of the assignment, and even though the insolvency proceedings as finally consummated shall be held by relation to have taken effect as of the 12th day of August, 1889, the day on which said petition was filed, still we do not think that said proceedings can be held to so affect the debt in question as to take away the jurisdiction of this court, and primarily for the reason that said assignment was not the personal act of Brown, Steese & Clarke. In other words, notwithstanding the fact that the said insolvency proceedings were set in motion by a part of the
264 debtors, viz., Steese and Clarke, or even by all of them, yet said proceedings are to be regarded as involuntary, the test being whether the insolvency system provides for compulsory proof of the debts under penalty of losing them by the discharge of the debtors from all liability therefor, and this the Massachusetts statutes clearly require. Admitting that the general rule is that a transfer of personal property by the owner thereof is governed by the law of the domicile of the owner, and also that this rule applies to voluntary assignments for the benefit of creditors, and that the title of the assignee thereunder, if valid by the law of the domicile, will prevail against the lien of an attachment made in another State, subsequent to such assignment in favor of a creditor there, upon a debt belonging to the assignor and embraced in the assignment—Noble *v.* Smith, 6 R. I., 447—yet this rule, as said by Andrews, C. J., in Barth *v.* Backus *et al.*, 140 N. Y., 235, "is subject to a qualification, established in the jurisprudence of the American States, that a title to personal property acquired *in invitum* under foreign insolvent or bankruptcy laws, good according to the law of the jurisdiction where the proceedings were taken, will not be recognized in another jurisdiction where it comes in contact with the rights of creditors pursuing their remedy there against the property of the debtor, although the proceedings were instituted subsequent to and with notice of the transfer in insolvency. This exception proceeds upon the view that to give effect to such a transfer arising by operation of law
265 and not based upon the voluntary exercise by the owner of the *jus disponendi*, would be to give the foreign law an extra-

territorial operation which the rule of comity ought not to permit to the prejudice of suitors of another jurisdiction."

Insolvency proceedings similar to these in the case at bar have repeatedly and almost uniformly been held not to affect an attachment made subsequent thereto in another State. See Goodsell *v.* Benson, 13 R. I., 225; Sturtevant *v.* Almsly, 23 Atl. Rep., 368; Rahn *v.* Pearce, 110 Ill., 350; Townsend *v.* Coxe *et al.*, 37 N. E. Rep., 689; Felch *v.* Bugbee, 48 Me., 18; Dunlap *v.* Rogers, 47 N. H., 281; Harrison *v.* Sterry, 5 Cranch., 289; Reynolds *v.* Addan, 136 U. S., 348; Paine *v.* Lester, 44 Conn, 197; McClure *v.* Campbell, 71 Wis., 350; *In re* Waite, 99 N. Y., 433; Crapo *v.* Kelley, 16 Wall., 610; Fox *v.* Adams, 5 Greenleaf, 254. We are therefore of the opinion that said insolvency proceedings in Massachusetts did not take away or have any effect upon the jurisdiction of the courts of this State over the debt in question, and, being of this opinion, it obviously becomes unnecessary for us to consider the title to said debt which is set up by the adverse claimants, as their title is based solely upon said insolvency proceedings and the conveyances made thereunder. It also becomes unnecessary for the same reason to consider the question, which was very learnedly argued by counsel, as to the "full faith and credit" to which the judicial proceedings in the superior court of Massachusetts, hereinbefore referred to, are entitled in this State.

266 The counsel for said Lippitt Woolen Company and the adverse claimant further contend that said debt was not attachable, because by the terms of the contract out of which it arose it was not due and payable at the date of such attachment, and that, as the principal defendants had no present right of action in Rhode Island against their debtors, the trustees, to hold that a garnishment can be maintained would be to place the plaintiffs in a better position than the principal defendants occupied. It is doubtless true, as a general rule, that the plaintiff in trustee process is not to be placed in a better position than the principal defendants with regard to the debt in question. Waldron *v.* Wilcox, 13 R. I., 518; Brown *v.* Collins, Index M. M., 9. But this rule, like most others, is subject to several exceptions (Wade on Attachm., vol. 2, § 327), one of which is that where the trustee owes a debt to the principal defendant, which debt is not subject to any contingency, it is liable to attachment by trustee process, notwithstanding the fact that it is not then due and payable, so as to enable the owner thereof to maintain a suit for its recovery—that is, if the debt is payable absolutely it may be attached though *solvendum in futuro*. This doctrine is so well established everywhere, excepting, perhaps, in the State of Tennessee (see Childress *v.* Dickens, 8 Yerger, 113; McMinn *v.* Hall, 2 Tenn., 328), as hardly to call for the citation of authorities in support thereof. If any are necessary, however, see Smith *v.*

267 Millett, 11 R. I., 535; Stone *v.* Hodges, 14 Pick., 81; Telles *v.* Lynde, 47 Fed. Rep., 917; Fulweiln *v.* Hughes, 17 Penn. St., 447; Sayward *v.* Dunn, 6 Me., 263; Drake on Attachm., 6 ed., §§ 541 & 557, and cases cited; Wade on Attachm., vol. 2, § 484.

Another point upon which counsel for the adverse claimant,

King, rely is that the common pleas division erred in ruling out the evidence offered by him for the purpose of showing that this is not a suit brought in good faith by a citizen of Rhode Island for his own benefit, but that it is colorable only, and in fact in the interest of the International Trust Company of Boston. To this it may be replied, first, that it is wholly immaterial whether the plaintiff was in fact the owner of the notes upon which the suit was based or simply had them in his hands for collection; for, being negotiable promissory notes, payable to said trust company and by it endorsed and delivered to the plaintiff, he unquestionably had the right to sue thereon—Bank of America *v.* Senior, 11 R. I., 376; and, second, that the common pleas division had no jurisdiction to inquire into the *bona fides* of the said suit at law, for the very conclusive reason that all questions relating to said notes and the plaintiff's right to sue thereon had become *res judicata* by the proceedings hereinbefore referred to; and, therefore, to have admitted the evidence offered by the claimant would have been in effect to allow a stranger to the suit to impeach the judgment rendered
268 therein.

The last ground upon which said Lippitt Woolen Company and the claimant King ask for a new trial is that the common pleas division wrongfully charged said Lippitt Woolen Company, as garnishee, with interest on the amount of its indebtedness to the principal defendants. The argument in support of this contention is, in substance, that the Lippitt Woolen Company had no specific moneys in its hands belonging to the principal defendants, either in trust or on special deposit or otherwise, but that it was simply indebted to them for the wool it had purchased; that any money with which it might satisfy said indebtedness was its own money, and if it is chargeable with interest it is simply because it has detained the debt since it became due and payable. The facts relating to this branch of the case, as shown by the sworn answers of said Lippitt Woolen Company, are that it has never made any special deposit of the amount disclosed in its original affidavit as due from it to the principal defendants; that it has never set apart said sum; that it is impossible to state how its use of the money due from it, as aforesaid, has been changed in consequence of the service of the plaintiff's writ upon it; that it has used all its money as it has seen fit, from time to time, without distinction, and that at the time of the service of the writ in this case its moneys were in various banks and in the hands of various individuals, and has fluctuated in amount from time to time since then, according to the necessities of its business.

269 The question as to whether the garnishee shall be required to pay interest on its debt due to the principal defendant during the time he is restrained by the attachment from paying the debt is one which has been much discussed and upon which the decided cases are not in accord. One line of authorities holds that where the garnishee is indebted to the principal defendant upon a demand where interest would be recoverable by the principal defendant only as damages for breach of contract, interest will not be

deemed to accrue during the pendency of the trustee process. The reason ordinarily given in support of this view is that the garnishee, having been restrained by the garnishment from paying his debt, is in no fault for not paying, and hence there is no wrongful detention, and consequently no liability for damages. See Prescott *v.* Parker, 4 Mass., 170; Irwin *v.* The Railroad Co., 43 Penn. St., 488; Adams *v.* Cordis, 8 Pick., 260; Swamscott Mch. Co. *v.* Partridge, 25 Foster, 380.

Another line of authorities holds that, as interest is the mere incident to the debt arising from the defendant's use of the money, the attaching plaintiff is as much entitled to recover the one as the other. In other words, that he is entitled to claim and recover all that the principal defendants could claim and recover from his debtor, the garnishee. Woodruff *v.* Bacon, 35 Conn., 97; see also Templeman *v.* Fauntleroy, 3 Randolph, Va., 447; Smith *v.* German Bank, 60 Miss., 73 '4; Candee *et al. v.* Webster, 9 Ohio St.,
270 452. We are inclined to adopt the latter view of the garnishee's liability rather than the former. We can see no sufficient reason for holding that a garnishee who continues to hold and use the money in his hands after it is due and payable should not be chargeable with interest thereon, notwithstanding he is prevented by the attachment from paying it over to the principal defendant. If he wishes to avoid his liability to pay interest, he can set the fund apart or so deposit it that it will draw interest, or, being a mere stakeholder, he can pay it into the registry of the court, where interest will accrue for the benefit of the party or parties finally held to be entitled thereto. Indeed, one of the presumptions upon which the first class of decisions above referred to seem to rest is that the garnishee keeps the money by him, set apart for the payment of the claim of the attaching creditor. Moreover, the injustice which would result in the present case, both to the principal defendants and also to the attaching plaintiff, by exonerating the garnishee from the payment of interest is a strong argument in favor of the position we have taken. The situation is this: The plaintiff has recovered a final judgment against the principal defendant in the sum of $—. The disclosure of said trustee shows that the sum of $11,938.39, belonging to the principal defendants, is in his hands. Now, suppose it to be charged with only this latter amount as garnishee. The result is that upon payment of said sum its entire indebtedness to the principal defendants is discharged, notwith-
271 standing the fact that it has had the use and benefit of said large sum in its business for upwards of five years. The principal defendants get no benefit from the use of said money by their debtor, the garnishee, by way of a reduction of their indebtedness to the plaintiff, on the one hand, and the plaintiff gets no benefit of said use by way of the satisfaction of his judgment against the principal defendants, on the other. In short, the result would be that the garnishee will have had the use and benefit of said large sum of money for the length of time aforesaid without being liable to anybody therefor. If it be argued that the said Lippitt Woolen Company has been necessarily subjected to trouble and expense,

as it apparently has, in the employment of counsel to properly protect its rights in the premises and in answering the numerous interrogatories propounded in behalf of the plaintiffs, and for that reason it ought not to be compelled to pay for the use of the money in its hands, it is sufficient to reply that it is within the power of the court to allow it such costs and charges as are reasonable in the case, under the provisions of the judiciary act, cap. 34, § 29.

We will now consider the grounds upon which the plaintiff asks for a new trial, and, first, with regard to the refusal of the court to charge the Riverside & Oswego mills and the Wanskuck Company as garnishees. The facts upon which the common pleas
272 division refused to charge these garnishees are as follows:

1. The disclosure of the Riverside & Oswego mills shows a very complicated state of affairs existing between it and the principal defendants, so that the balance due from it to them is very difficult, if not, indeed, impossible, to determine in a proceeding of this sort. It also shows that at the time of the service of the plaintiff's writ upon it all of the property of said principal defendants in its hands and possession had already been attached in suits brought against said principal defendants by the Industrial Trust Company and the Hollis Dressed Meat and Wool Company, the aggregate amounts claimed in which suits exceeded the amount of the defendants' property in the hands and possession of said Riverside & Oswego mills.

2. The Wanskuck Company's disclosure shows that it had in its hands and possession at the time of the service of the plaintiff's writ upon it $28,823.80, due to the principal defendants; that a part thereof, viz., $6,808.23, was the price of eighty-two bags of wool bought by it of said principal defendants July 26, 1889, under the supposition that said bags of wool were the property of said principal defendants; but that after the purchase of said wool the Massachusetts Loan & Trust Company of Boston notified it that said wool was its property and not the property of said defendants, and that said defendants had no right or authority to sell
273 the same, and that said Massachusetts Loan & Trust Company would look to said Wanskuck Company for the purchase price thereof. It also appears that said Massachusetts Loan & Trust Company now has a suit in trover pending in said common pleas division against said Wanskuck Company for the value of said eighty-two bags of wool.

3. Said Wanskuck Company's disclosure also shows that at the time of the service of the plaintiff's writ upon it all the property of said principal defendants in the hands and possession of said Wanskuck Company had already been attached in suits brought against said principal defendants by the Hollis Dressed Meat and Wool Co., the Industrial Trust Company, and the Massachusetts Loan & Trust Company, which suits are still pending, the aggregate amounts claimed in the same exceeding the amount of the defendants' property in said Wanskuck Company's hands and possession.

In view of these disclosures, the common pleas division held that

it could not enter a charging order against the Riverside & Oswego mills and the Wanskuck Company, for the reason that, until it shall be ascertained by the disposition of the pending suits wherein said garnishees have been previously served with trustee process, it is impossible to determine whether either of said garnishees are chargeable, and, if chargeable, to what extent.

We think this ruling was correct; for, while the statute clearly recognizes the possibility and the right of successive attach-
274 ments of the same property (judiciary act, cap. 33, § 32, and cap. 34, § 1) and the right of the plaintiff to share therein after judgment in the order of his attachment, as contended by plaintiff's counsel, yet we do not see how the court could enter a charging order in this case until the disposition of said prior suits, for the reason that the whole fund in the hands of said garnishees may be absorbed in the payment of the judgments which may be obtained in the prior actions; and when the question as to whether a garnishee should be charged is involved in litigation in this manner, with the result necessarily problematical and in doubt, the court will not enter a charging order. Moreover, said statute (judiciary act, cap. 34, § 18) provides that the court in charging a garnishee must determine the extent to which he is chargeable, and also that the execution which issues upon the judgment shall have the amount for which he is charged inserted therein. Judiciary act, cap. 36, § 20. And until the amount due upon said prior attachments shall have been determined, it is impossible to say whether any amount will remain to be applied under this attachment. The proper course for the plaintiff to have taken in these circumstances was to ask for a continuance of the case until said prior suits were disposed of. Cutter *v.* Perkins, 47 Me., 557; Prentiss *v.* Danaher *et al.*, 20 Wis., 328; Brickley *v.* Davis, 9 Bradw., 362; Drake on Attachm., 6 ed., § 630. Indeed, the common pleas division repeat-
edly suggested the difficulty aforesaid and offered to hold the
275 case until the determination of said prior suits, but the plaintiff insisted upon an immediate determination by the court of the liability of said garnishees. He has no occasion, therefore, to complain of the situation in which he is placed by its refusal to charge said garnishees.

The next question in point of importance which is raised by the plaintiff's petition for a new trial is whether the assignees of the Riverside & Oswego mills are chargeable as garnishees. We are clearly of the opinion that they are not, and that the common pleas division was right in discharging them. In order to charge a garnishee it is necessary (1) that he shall have personal property in his possession belonging to the defendant capable of being seized and sold on execution, or (2) that he be liable *ex contractu* to the defendant, whereby the latter has at the time of the garnishment a legal cause of action, present or future, against him. In other words, in order to a recovery against a garnishee it must be shown affirmatively, either by his answer or by evidence *aliunde*, that he has property of the defendant in his possession of a description which will authorize his being charged, or that he is indebted to the de-

fendant. Drake on Attachm., § 461; Smith *v.* Millatt, 11 R. I., 535; Ins. Co. *v.* Weeks, 7 Mass., 438, '9; Field *v.* Crawford, 6 Gray, 116. These garnishees at the time of said service upon them had no personal property in their possession belonging to the principal defendants capable of being seized and sold on execution, nor had the principal defendants any legal cause of action against said garnishees. The trusts of the assign-
276 ment, which they had assumed, were still in process of administration and no dividend had been declared, and even if as *cestuis que trustent*, entitled to participate in the benefits of the assigned estate in the hands of the assignees, the principal defendants could have compelled in equity the execution of the trust and also an accounting, yet this merely equitable right was not attachable by trustee process. See Perry & Barnard *v.* Thornton, 7 R. I., 15; Clarke *v.* Farnum *et al.*, 7 R. I., 174; Waldron *v.* Wilcox, 13 R. I., 520; Bank *v.* Bullock, 120 Mass., 86; Nims *v.* Ford, 159 Mass., 575; Hoyt *v.* Smith, 13 Vt., 129; Hassie *v.* Congregation, 35 Col., 378; Drake on Attachm., §§ 457 & 511. Again, the debt for which an attachment in trustee process may issue must possess an actual character and not be merely possible or probable even, depending on a contingency which may never happen. In the case at bar there was no debt owing from the assignees to the principal defendants at the time of the garnishment, and whether there ever would be depended upon several contingencies. The expenses attending the execution of the assignment, which were first to be paid, might exhaust the property; so might the payment of the preferred claims of the employees; and the mere fact that long subsequent to the service of said writ on the assignees, it turned out that said estate was sufficient to pay a dividend, and that a dividend of 62½ per cent. was declared by the assignees, makes no difference; for, even admitting that an action at law will lie against them for the
277 amount of a dividend after it is duly declared, and also that they would be liable to trustee process in such circumstances, yet at the time of the service of the writ in this case there was no dividend, and hence there was no debt.

In support of its contention that said assignees were properly chargeable as garnishees, counsel for the plaintiff commends to our attention the case of Irvin *v.* McKechine, recently decided by the supreme court of Minnesota, in which the receivers of a railroad, although officers of the court, are held liable to the process. An examination of that case, however, shows that under the statute of that State styled "the removal act," passed March 3, 1887, receivers are subject to suit in respect to any transaction of theirs in operating the road placed under their control by the court; but, while admitting that this was so, the counsel for the garnishees in that case took the point that the money sought to be reached was *in custodia legis*, and hence not subject to garnishment. The court said: "No one will question the correctness of the proposition that property in the hands of receivers appointed by the court is *in custodia legis*, and not subject to levy or garnishment. This doctrine receives additional force in this case from the rule

of judicial comity between State and Federal courts, by which each will refuse to interfere with property in the custody of the other—a rule which we are always solicitous to observe; but in this case it will — noticed that what is sought to be reached by garnishment is the property, not of the railway company,
278 but of the defendant, viz., a debt due him from the receivers. Moreover, while garnishment of a debt is often called a mode of attachment, yet it does not effect a specific lien on any property of the garnishees, such as is acquired by the actual seizure of property. The effect of the judgment is merely to determine the existence and amount of the debt, and to substitute the plaintiff for the defendant as the person to whom it is payable. The judgment against the receivers would not be against them personally, but against them officially. No executory process could be issued on it, for that would interfere with the control of the property in the custody of the Federal court. The manner in which the judgment so rendered shall be paid must be under the exclusive control of that court. It can only be satisfied as other demands may be satisfied, viz., by an application to the court in which the receivership proceedings are pending for an order directing its payment in the due order of the settlement of the affairs of the insolvent company by that court. Under the 'removal act' the defendant himself could have sued the receivers and recovered judgment, and we are unable to see why the plaintiff may not, through garnishee proceedings, recover judgment against them for the same claim, or why a judgment in his favor interferes with property in the custody of the Federal court any more than would a judgment in favor of the defendant for the same claim. We understand that the order of the court appointing these receivers is even broader than the
279 statute, and authorizes suit to be brought in any court of competent jurisdiction on claims against the company which accrued before the receivership, as well as those subsequently incurred by the receivers. We only refer to this as showing that the Federal court does not consider such suits as at all interfering with jurisdiction over the receivership or with the property in its custody. In view of the fact that the receivers of railway companies, as ancillary to winding up the insolvent estate for the benefit of creditors, are authorized to operate the road in lieu of the directors—sometimes for years—any other rule would work great injury, and would often leave the creditors of the employees of the receivers remediless." This case, therefore, as we view it, is clearly against the position taken by the plaintiff's counsel instead of being an authority in support of it.

But it is urged that the word "trustee" in our statute relating to persons who may be garnisheed is broad enough to include one holding property in trust for the benefit of another, and particularly for the reason that the statute in which the phrase "the attorney, agent, factor, trustee, or debtor" appears was in force as early as 1774, when and for a long time afterwards our courts had no chancery jurisdiction over private voluntary trusts, and the creditor had no other means of reaching his debtor's property held

under it than that by this process. It is true that the word "trustee," taken by itself, is broad enough to include, and does include, an assignee, for an assignee is the trustee both for
280 the creditors of the assignor and also for the assignor himself. Said word must not be taken out of its setting, however, and simply its abstract or technical meaning determined; but it must be considered in its collocation and also with reference to the process of garnishment provided for by our statutes relating to that subject; and (1) it may be observed that the proceeding itself is denominated "trustee process" in the statutes. This is the term generally employed in the N. E. States to designate the proceeding. See cap. 34, § 24, judiciary act. In some States it is called "factorizing." In the one case the party in possession is called the "trustee;" in the other the "factor;" but, after all, it is but another mode of effecting the same general purpose. (2.) The form of writ prescribed by our statute commands the attachment of the personal estate of the defendant in the hands or possession of —— —— as "trustee" of the defendant. It is the "trustee" who is to make the disclosure provided for (cap. 34, § 10, judiciary act), and it is the "trustee" who is authorized to satisfy the judgment against the defendant in all cases. Cap. 34, § 15, judiciary act. It is the "trustee" who, in case the property in his hands does not consist of money but of specific articles, is authorized, after judgment against the principal defendant, to surrender such articles to the officer charged with the service of the execution. Cap. 34, § 16, judiciary act. In short, the word "trustee," as used in the various
281 provisions of the statutes relating to trustee process, manifestly denotes the debtor or agent of the principal defendant—*i. e.*, the person against whom an action *ex contractu* at law only might be maintained in favor of the principal defendant—and is not used in its technical sense. (3.) It was evidently never intended that the trustee process provided for in our statutes should be an equitable proceeding, but strictly a proceeding at law. See Raymond *v.* Tinware Co., 14 R. I., 310. As pertinently stated by the plaintiff's counsel himself in his brief, "Trustee process is statutory, and the rights legal rights." If the General Assembly had intended that assignees in insolvency, or even voluntary assignees, should be liable to trustee process, it is reasonable to suppose that the necessary legal machinery for bringing in all the parties in interest, the taking of an account, &c., would have been provided. The farthest our statutes have gone in the direction of making trustee process an equitable proceeding is by letting in adverse claimants to the fund in dispute (Pub. Laws R. I., cap. 433), and thereby to some extent making it answer the purpose of a bill of interpleader. Prov. Inst. for Savings *v.* Barr, 17 R. I., 133; Hanaford *v.* Hawkins, Index N. N., 60; Jenness *v.* Wharff, 32 Atl. Rep., 908. Nor does the fact suggested by plaintiff's counsel, that at the time when our statute relating to trustee process was first enacted the court had no chancery jurisdiction, enlarge the scope of said act, for it does not follow that because the law fails to pro-

vide a remedy in a given case some other remedy may
282 be employed. See Godding *v.* Pierce, 13 R. I., 532. We may also add that, notwithstanding the great length of time that said word "trustee" has been used in our statutes relating to trustee process, no case has ever arisen, so far as we are aware, in which an assignee has been held chargeable as trustee thereunder, at least until after a dividend has been declared, nor has it ever been considered at the bar that he could be so held. See Conway *v.* Armington, adm., 11 R. I., 116. In Perry & Barnard *v.* Thornton, 7 R. I., 15, in which it was attempted to reach an annuity in the hands of the guardian by trustee process, Ames, C. J., said: "It is very plain that he was not her debtor for her annuity nor, in the sense of the statute, her trustee of the rents and profits of the estate of his wards."

Again, the plaintiff asks for a new trial because the common pleas division overruled his motion to reopen the case and summon in the prior attaching creditors as parties thereto. The object of this motion, as stated therein, was "that they" (said prior attaching creditors) "and each of them may show to this court and that the court may examine and determine the validity and amount of such their respective alleged prior attachments and pledge, the said plaintiff denying that said parties or either of them now have any valid claim upon or to either of said attached fund or any property or any part thereof." This was clearly an attempt to force the prior attaching plaintiffs to try their cases in the bowels of the one now before us. We do not think this can be done. The prior
283 attaching creditors are already in court in the cases before referred to and clearly have the right as suitors to try their own cases in their own way. If they should be summoned into this case, there would then be two suits pending to determine the validity of each of their claims against the defendants, and endless confucion and difficulty would arise in finally settling the relative rights of the parties in interest, if indeed it were possible to settle said rights in this way. In short, to have granted the plaintiff's motion would have been in effect to allow him to intervene in said prior suits, which this court has already decided cannot be done. See Cross, petitioner, 17 R. I., 568. And, as said by the court in that case, "The orderly way in law is for each one to pursue his own rights in his own action, and if in so doing another seeks to circumvent him by fraud the existing remedies are ample." This statement also applies with equal force to the trover suit of The Massachusetts Loan & Trust Company *v.* The Wanskuck Company, in which it was sought to recover damages for the conversion of a part of the property which the present plaintiff claims to hold under his attachment. The case of Hanaford *v.* Hawkins, index N N, 58, upon which the plaintiff's counsel mainly relied in support of the motion now under consideration, disclosed a very different state of facts from that which exists in this case. There it simply appeared from the disclosure of the garnishee that he had received a letter from one John A. Hawkins prior to the garnishment, stating that he had purchased the judgment,
284 the amount of which the garnishee had collected and had in his possession, but that the garnishee knew nothing of the

truth of the alleged fact of an assignment of said judgment. It did not appear, however, in that case that any suit was pending in favor of such alleged claimant, or that he had taken any steps to recover said fund except the giving of said notice to the garnishee; nor did it appear, even, that said alleged claimant had had any notice of the garnishment, so that he might appear if he saw fit and be heard on the question of title to said fund. In these circumstances we held that the alleged claimant should be summoned in and made a party to the suit before determining as to the liability of the garnishee, in order that both his (said claimant's) rights as well as those of the attaching plaintiff in said fund might be fully protected.

Still another ground upon which the plaintiff asks for a new trial is the admission of certain supplemental affidavits or disclosures by the garnishees. We think it was clearly within the discretion of the court to allow such supplemental affidavits to be filed. Winsted Bank *v.* Adams, 97 Mass., 110; Collins *v.* Smith, 12 Gray, 433–'5; Hovey *v.* Crane, 12 Pick., 166; Soule *v.* Ice Co., 85 Me., 166. The propriety of allowing a garnishee to amend his affidavit or disclosure when requested by him is generally recognized. "There may be cases," as said in Drake on Attachm., § 650, "where the garnishee discovers new facts or finds that he has made an imperfect
285 or erroneous statement, and there seems to be nothing in principle to prevent him before final judgment from making a more complete, perfect, and correct answer, being responsible, as in all other cases, for its truth. The only objection which could arise is that a garnishee might be induced, by new suggestions and new views, to put in an answer varying from his first answer and not true in itself; but when it is considered that by any mode of administering the law the garnishee might employ his own counsel and make such answer as he will there seems to be no more danger of falsification in one case than in the other." If, as suggested by the plaintiff's counsel, it appears by the record itself in the case at bar to be perfectly evident that all of said supplemental affidavits were made at the instance of and in collusion with the claimant King, that certainly cannot prejudice the plaintiff's rights, the rule being that evasive answers by the garnishee will be treated as a nullity. Scales *v.* Swan, 9 Porter, 163; Parker *v.* Page, 38 Cal., 522. Or, if not so, they will be construed most strongly against him. Crain *v.* Gould, 46 Ill., 293; Keel *v.* Ogden, 5 Monroe, 362. And any equivocation will subject the entire answer to suspicion.

With regard to the point taken by the plaintiff's counsel, that the overruling by the common pleas division of his motion to strike out certain portions of the affidavits of the garnishees was error, we have to say that we do not think it should be sustained. It was a motion which addressed itself to the sound discretion of the court, and hence
286 unless it is shown that the overruling thereof was clearly an abuse of such discretion, it is not a proper subject of review. An examination of the affidavits in question does not satisfy us that said ruling was improper. For, while some of the matter objected to is manifestly irrelevant and impertinent, and, as remarked by Rogers, J., in his opinion, "as such when offered by the claim-

ants as mere testimony was not admitted, but when presented and sworn to by the garnishees in their affidavits was allowed to be filed, such permission was granted because, in the opinion of the court, the rights and liabilities of garnishees and claimants are very different. A garnishee is involuntarily summoned in. If he fails to answer fully, he does so at the peril of being obliged to pay twice. If he makes a false answer or affidavit, he is liable to an action for damages which may result to the plaintiff from such answer or affidavit. The sworn answer of the garnishee shall be considered true in deciding how far said garnishee is liable, though either party to the suit or any claimant of the estate so attached may allege and prove any facts not stated or denied by said garnishee or trustee that may be material in so deciding. While, in the case of an ordinary witness, testimony deemed by the court to be irrelevant will not be admitted to take up the time of the court, yet in the case of garnishees' affidavits, as the matter disclosed is deemed by the garnishee necessary for his protection, it would seem to be the better course to let them stand and upon consideration
287 of the case to reject irrelevant parts than to suppress and strike out such parts, as in the former case the appellate division, if the case should be taken up to it, would have the full and undisturbed garnishees' disclosures before it, and could also reject what it deemed irrelevant."

As to the contention of the plaintiff that he should have been permitted to offer evidence in support of his allegations filed February 27, 1894, we are of the opinion that it cannot be sustained. Said allegations, or rather allegations and interrogatories combined, for such they, in fact, are, related (1) to the acts of the prior attaching plaintiffs in proving the debts on which said prior actions were based, in the insolvency proceedings in Massachusetts, and also in receiving dividends thereon; (2) to the discharge of said defendants in said insolvency proceedings; (3) to the fact that the Riverside & Oswego mills or any of its directors or officers never made and filed in the city clerk's office of the city of Providence any return, under the statute in such case provided, to exempt its stockholders and directors from personal liability for its debts; (4) to the question as to how said trust company originally came to the possession of the notes, drafts, and obligations of the defendants referred to in the affidavit of the Wanskuck Company, and for and to whom the same and their proceeds were originally discounted and paid, and what, if any, collaterals were held by said trust company for the same, and the disposition thereof, and what payments said trust company has received upon the
288 said notes and obligations, either from such collateral or otherwise, and what disposition it has made of the said notes, drafts, and obligations, and which of the same it now holds, and what is the present condition of and who now holds or is really entitled to the same; (5) to the question as to what and for what was the indebtedness of the defendants to said trust company sought to be enforced in said attachment suit against the defendants referred to in the affidavits of said Wanskuck Company, and what collat-

erals were held by said trust company for the same, and as to what disposition has been made of said collaterals, and what payments said trust company has received upon said indebtedness, either from such collaterals or otherwise, and what disposition of said indebtedness or the evidences thereof has been made by said trust company, and what or which of the same it now holds, and what is the present condition of and who now holds or is really entitled to the same; and (6) as to what was the indebtedness of said defendants to said Hollis Dressed Meat and Wool Co. sought to be enforced in its attachment suit aforesaid, and what, if any, collaterals were held by said Hollis Dressed Meat and Wool Co. for the same, and the disposition which has been made of said collaterals, and the payments which have been received upon said indebtedness, either from such collaterals or otherwise, and what disposition of said indebtedness or the evidences thereof has been made by said Hollis Co., and what
289 or which of the same it now holds, and what is the present condition of and who now holds or is really entitled to the same. It will thus be seen at a glance that to have allowed the evidence offered would have been, in effect, to try the cases of the said prior attaching creditors in the bowels of the one now before us, besides converting the whole proceeding into a bill in equity, neither of which, as we have already seen, can be done.

Finally, we are therefore of the opinion that neither the plaintiff's petition for a new trial nor that of said Lippitt Woolen Company and Theophilus King, adverse claimant, should be granted. Said petitions are therefore denied and dismissed and the case remitted to the common pleas division for further proceedings.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, *October* 1, *A. D.* 1897.

Supreme Court, Appellate Division.

JOHN A. CROSS
v.
BROWN, STEESE & CLARKE. } No. 2031. Ex.

A true copy of the original opinion in the above-entitled case filed October 28, A. D. 1895, and now on file.

Attest:
(S'g'd) BERTRAM S. BLAISDELL, *Clerk.*

[Endorsed:] Exc., 2031.

290 (*Record of Case.*)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division, September Session, A. D. 1895.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } No. 4867.

Be it remembered that at the December term, A. D. 1889, of the court of common pleas within and for the county of Providence John A. Cross, of the city and county of Providence, complained of Gideon T. Brown, of Alston; Edward Steese and Amasa Clarke, of Brookline, all in the State of Massachusetts, now or late copartners, doing business under the firm name of Brown, Steese & Clarke, whose personal property and estate has been attached, and who have been summoned in an action of the case, for that the said defendant, by and under the name, style, and firm of Brown, Steese and Clarke, at Boston, in the State of Massachusetts, to wit, the ninth day of April, A. D. 1889, by their promissory note in writing of that date by them signed, for value received, promised to pay to the order of the International Trust Company at its place of business, in said Boston, twenty thousand dollars on demand, with interest at the rate of 5½ per cent. per annum, and thereafterwards, to wit, on the same day, the said International Trust Company indorsed and delivered said note to the plaintiff; and the plaintiff avers that, though often requested, the said defendants have not paid said note; and also for that the said defendants, by and under the name, style, and firm of Brown, Steese & Clarke, at Boston, in the State of Massachusetts, to wit, the seventh day of May, A. D. 1889, by their
291 promissory note in writing of that date by them signed, for value received, promised to pay to the order of the International Trust Company, at its place of business in said Boston, twenty thousand dollars on demand, with interest at the rate of 5 per cent. per annum; and thereafterwards, to wit, on the same day, the said International Trust Company indorsed and delivered said note to the plaintiff, and the plaintiff avers that, though often requested, the said defendants have not paid said notes. The plaintiff also filed the usual common money counts; averred that, though requested, said defendants had not paid said sums or any part thereof, and laid damages at $70,000.00. Said case was duly entered, and thereupon said defendants made answer of the general issue that "they never promised," etc., and, issue being thereupon joined, said case was set down for trial to the March term, A. D. 1890, of said court of common pleas, when said case, being called for trial, was argued by counsel and committed to a jury duly impanelled and sworn to try the issue joined, who found that the defendants did promise in manner and form as the plaintiff has in his declaration thereof complained against them and assess damages for the plaintiff in the sum

of $41,534.27; and thereupon judgment was stayed and said case continued from term to term unto the June term, A. D. 1893, of said court of common pleas, and then, under the provisions of the judiciary act, to the September session, A. D. 1893, of this common pleas division of the supreme court within and for said county of Providence, and then from session to session unto this present September session, A. D. 1895, of said division, and from time to time from said March term, A. D. 1890, of said court of common pleas to this present session of this said common pleas division, said case was heard by the court, Rogers, J., upon
292 the respective rights and claims of the Lippitt Woolen Company, the Wanskuck Company, the Atlantic mills, and the Riverside & Oswego mills, corporations duly incorporated, all of said city and county of Providence, and of Charles D. Owen, James B. Case, and Chester A. Braman, assignees of said Riverside & Oswego mills, all served with process as trustees of said defendants; and upon the petitions of Theophilus King, of Quincy; George S. Bullens, of Newton, and Warren Sawyer, of Wellesley, all in the Commonwealth of Massachusetts, trustees, to intervene as adverse claimants to the personal estate of said defendants attached in the hands of certain of said garnishees; and upon the original and supplemental affidavits of certain of said garnishees and upon various interrogatories to certain of said garnishees, and also upon the motion of said plaintiff to charge said garnishees except said Atlantic mills, the assignees of said garnishee, the Riverside & Oswego mills, being discharged at the June term, A. D. 1893, of said court of common pleas; and at the September session, A. D. 1893, of this said division decision was filed by the court, Rogers, J., as follows: That plaintiff's motion to suppress and strike out certain portions of the garnishees' affidavits be denied; that the plaintiff's motion, filed June 12th, A. D. 1894, to reopen the case for the purpose of making new parties be denied; that plaintiff have judgment on his verdict; that the Lippitt Woolen Company is chargeable in this action, as trustee of the defendants, in the sum of $11,938.39, together with interest thereon, at the rate of 6 per cent. per annum, from September 12th, A. D. 1889, and that the Wanskuck Company and the Riverside & Oswego mills are not chargeable in this action, as trustee of the defendants; and said case was duly certified to the appellate division of this said supreme court upon the petitions for a new trial preferred by said plaintiff, said Lippitt Woolen Company, garnishee, and said Theophilus King, adverse claimant; and
293 now, at this said present session of this said common pleas division, said petitions for a new trial are all dismissed by said appellate division and said case remitted to this said common pleas division for further proceedings, and, by agreement, judgment is entered by the court, Douglas, J., to wit, upon the 14th day of December, A. D. 1895, upon said verdict for said plaintiff for the sum of $55,822.06 debt and his costs of suit, taxed at $189.70, of which said sums said Lippitt Woolen Company, garnishee, is charged, as

trustee of the said defendants, to the extent of $16,421.26, and all other trustees are not charged. Ex. Gr.

Attest:

(S'g'd) GEO. E. WEBSTER, *Clerk.*

294 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court, Common Pleas Division.

CLERK'S OFFICE.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

I, George E. Webster, clerk of said common pleas division of the supreme court within and for said county of Providence and custodian of the records of the late court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of the record and proceedings in the above-entitled cause now remaining in said division of the supreme court, together with a true copy of such documents and exhibits now on file concerning the same as have been designated by the attorneys of said Lippitt Wool Company and said Theophilus King in said cause, in which said cause judgment was rendered at the September session, A. D. 1895, of this said division.

Seal Supreme Court, Common Pleas Division, State of Rhode Island and Providence Plantations, Providence County.

Witness my hand and the seal of said division, at the city of Providence, in said county of Providence and State aforesaid, this fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

GEO. E. WEBSTER, *Clerk.*

295 UNITED STATES OF AMERICA, *ss:*

[Seal of Circuit Court, Rhode Island.]

The President of the United States to the honorable the judges of the supreme court of the State of Rhode Island, holden at Providence, within and for the county of Providence, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the State of Rhode Island in which a decision could be had in the suit between John A. Cross, plaintiff, and Brown, Steese & Clarke, defendants, Lippitt Woolen Company, alleged trustee, and Theophilus King, adverse claimant, wherein was drawn in question the validity

of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Theophilus King, adverse claimant, and Lippitt Woolen Company, alleged trustee, as by their complaints appear, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the third Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-seven.

WILLIAM P. CROSS,
Clerk of the Circuit Court of the United States,
District of Rhode Island.

Allowed by—

CHARLES MATTESON,
Chief Justice of the Supreme Court
of the State of Rhode Island, &c.

296 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *ss.:*

And now here the judges of the supreme court of said State, presiding at the common pleas division of said supreme court within and for said county of Providence, make return of this writ by annexing hereto and sending herewith, under the seal of the said division of said court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things designated as concerning the same, to the Supreme Court of the United States, as within commanded.

Seal Supreme Court, Common Pleas Division, State of Rhode Island and Providence Plantations, Providence County.

In testimony whereof I, George E. Webster, clerk of said common pleas division of the supreme court within and for said county, have hereto set my hand and the seal of said court this fifteenth day of October, A. D. 1897.

GEO. E. WEBSTER, *Clerk.*

[Endorsed:] Writ of error. Theophilus King *et als.*, pl'ffs in error, *vs.* John A. Cross *et als.*, def'ts in error. Supreme court, com. pleas div., Sep. 18, 1897. Geo. E. Webster, clerk.

297 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To John A. Cross, Gideon P. Brown, Edward Steese, and Amasa Clarke, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court, common pleas division, of the State of Rhode Island, wherein Theophilus King and The Lippitt Woolen Co. are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles Matteson, chief justice of the supreme court of Rhode Island, this 18th day of September, in the year of our Lord one thousand eight hundred and ninety-seven.

CHARLES MATTESON,
Chief Justice Supreme Court of Rhode Island, &c.

Due and sufficient service of the within citation is hereby acknowledged this the 15th day of October, 1897.

GIDEON P. BROWN,
EDWARD STEESE,
AMASA CLARKE,
By their attorney, WALTER H. BARNEY.

298 DISTRICT OF RHODE ISLAND, *sc:*

In Providence, this 15th day of October, A. D. 1897, I have made service of the within citation on the within-named John A. Cross, by reading the same to him and by leaving a true and attested copy of the same in his hands & possession.

JAS. S. McCABE,
U. S. Marshal.

Service	2.00
Copy	.30
Trans.	.06
	$2.36

299 [Endorsed:] Theophilus King *et als.*, pl'ffs in error, *vs.* John A. Cross *et als.*, def'ts in error. Citation.

Endorsed on cover: Case No. 16,703. Rhode Island supreme court. Term No., 186. Theophilus King, adverse claimant, and The Lippitt Woolen Company, alleged trustee, plaintiffs in error, *vs.* John A. Cross, Gideon P. Brown, Edward Steese, and Amasa Clarke. Filed October 21st, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1894

No. 28

THEOPHILUS KING, ADVERSE CLAIMANT, AND THE LIPPITT WOOLEN COMPANY, ALLEGED TRUSTEE, *Plaintiffs in Error*,

v.

JOHN A. CROSS, GIDEON P. BROWN, EDWARD STEESE AND AMASA CLARKE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

BRIEF FOR PLAINTIFFS IN ERROR.

BRIEF EXTRACT OR STATEMENT OF THE CASE.

This cause comes to this Court from the Supreme Court of the State of Rhode Island, on a writ of error sued out by Theophilus King, adverse claimant, and the Lippitt Woolen Company, alleged trustee, on the ground of federal questions, to reverse the order or judgment of the said Supreme Court of Rhode Island, charging the Lippitt Woolen Company as trustee of the principal defendants in an action in said Court wherein John A. Cross, of Providence, Rhode Island, was plaintiff, and Gideon P. Brown, of Boston, Edward Steese and Amasa Clarke, of Brookline, all in the Commonwealth of Massachusetts, were defendants.

In July and August, 1889, Brown, Steese & Clarke, a firm doing business in Boston, Massachusetts, all the members of which were residents and citizens of Massachusetts, sold certain wool to the Lippitt Woolen Company, a corporation organized and existing under the laws of Rhode Island. The sale was made and the wool delivered in Boston, and the purchase price for the same was there

payable when it should become due. By the terms of the contract of sale, however, none of the purchase price became due and payable until on or after September 12, 1889.

On the 12th of August, 1889, Brown, Steese & Clarke, having become insolvent, duly applied by a voluntary petition to the Judge of the Court of Insolvency in and for the County of Norfolk and Commonwealth of Massachusetts, setting forth their inability to pay all their debts and their willingness to assign all their estate and effects for the benefit of their creditors, and praying that such proceedings might be had in the premises as are provided in Chapter 157 of Massachusetts Public Statutes, that is, the insolvency laws of that Commonwealth. Section 17 of said Chapter 157 provided: "If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than $200, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of the deputies, directing him forthwith as messenger to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from attachment, and all his deeds, books of account and papers, and keep the same safely until the appointment of an assignee." On the 21st of said August, the said judge duly issued a warrant under his hand to a deputy sheriff of the county, directing him forthwith, as messenger, to take possession of all the estate, real and personal, of the debtors, except such as might be by law exempt from attachment, and all their deeds, books of account and papers, and keep the same safely until the appointment of assignees. The first publication of notice of the issuing of said warrant was duly made on the 23d of said August. On the 4th of September following, assignees were duly elected and appointed, and, on the same date, the judge, by an instrument under his hand, duly purported to assign and convey to said assignees all the estate, real and personal, of said debtors, except such as was by law exempt from attachment, and all their deeds, books and papers relating thereto. Sections 46 and 51 of said Chapter 157 further provided: "The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might

have been taken on execution by a judgment against him at the time of the first publication of notice of issuing the warrant. . . . *The assignment shall vest in the assignee all debts due to the debtor* or any person for his use, and liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate. . . . He shall have the like remedy to recover all the estate, debts and effects in his own name as the debtor might have had if no assignment had been made. In suits prosecuted by the assignee, the assignment by the judge shall be conclusive evidence of his authority to sue." Section 109 of said Chapter 157 further provided: "Suits upon claims sold by assignees shall be brought in the name of the purchasers. The fact of sale and of purchase by the plaintiff shall be set forth in the writ, and the defendant may avail himself of any matter of defense of which he could have availed himself in a suit upon the claim by the assignee. Costs in such suits shall be recovered by and against the plaintiff, and the assignee shall not be liable therefor." The assignees of Brown, Steese & Clarke, by virtue of the assignment to them as aforesaid, and of the provisions of said insolvency laws of Massachusetts, duly purported to sell and assign the claim against the Lippitt Woolen Company to Theophilus King, a citizen and resident of Massachusetts, who, as shown by the duly authenticated record as such purchaser and under and by virtue of said Section 109, brought suit thereon in his own name against the Lippitt Woolen Company and recovered judgment thereon.

As already stated, the date of Brown, Steese & Clarke's application to the Judge of the Court of Insolvency, stating their inability to pay their debts, their willingness to assign all their property and effects, and asking that such proceedings might be had as were provided for in the Massachusetts insolvency laws, was August 12, 1889. The next day, August 13, 1889, the plaintiff, John A. Cross, commenced this action against Brown, Steese & Clarke by service of garnishment on the Lippitt Woolen Company, summoning the Lippitt Woolen Company as an alleged trustee of Brown, Steese & Clarke. The writ was returnable to the Court of Common Pleas, now the Common Pleas Division of the Supreme Court of Rhode

Island. The proceeding was thus effective, if at all, only as a proceeding *quasi in rem* to reach property of the principal defendants; for Brown, Steese & Clarke were not personally subject to the jurisdiction of the Rhode Island Court, nor were they served with process in Rhode Island, the only service on them being by sending, as authorized by the Rhode Island statutes, an attested copy of the writ by mail to their address in Massachusetts. And the property thus sought to be reached was the obligation of the Lippitt Woolen Company to Brown, Steese & Clarke above stated. Although Brown, Steese & Clarke did subsequently appear and submit to the jurisdiction of the Rhode Island Court, they did not so appear or submit to the jurisdiction of that Court until long after the assignment of all their property, debts due them, and rights of action therefor, to their assignees under the insolvency proceedings in Massachusetts, to wit, until January 7, 1890. (Record, p. 110.)

Under and by virtue of Chapter 433 of the Public Laws of Rhode Island (now The Gen. Laws, c. 254, sec. 24) the said King became on his own motion a party to the action as adverse claimant, setting up, as entitled to full faith and credit, the insolvency laws and proceedings thereunder in Massachusetts as aforesaid, and also his judgment against the Lippitt Woolen Company. The Lippitt Woolen Company also, for its protection, was allowed to file additional answers or affidavits setting up, as entitled to full faith and credit, the same insolvency laws and proceedings thereunder and the said judgment against it and asking to be discharged.

The Court, nevertheless, excluded the duly authenticated copies duly offered in evidence by the adverse claimant, as not entitled to full faith and credit with the effect claimed therefor by the adverse claimant; and although, as already stated, the Court allowed the Lippitt Woolen Company, for its protection, to file answers setting up such copies and facts, and by the law of Rhode Island the facts set up in the answer are to be considered as true on the question of charging or discharging, the Court, nevertheless, charged the Lippitt Woolen Company as trustee for the sum of $16,421.26, thereby necessarily refusing to give full faith and credit to such proceedings

with the effect claimed therefor by the said Lippitt Woolen Company and the said King.

Under Chapter 31 of the Judiciary Act (now The Gen. Laws, c. 251), King and the Lippitt Woolen Company, respectively, deeming themselves aggrieved by these directions, rulings and decisions of the Common Pleas Division of the Supreme Court, duly complied with the course of procedure entitling them to have their petitions for a new trial, grounded on such matters, heard before and decided by the Appellate Division of the Supreme Court, which denied the same and remitted the cause with the papers therein to the Common Pleas Division, for entry of judgment, etc. (The Judiciary Act, c. 31, sec. 11.)

SPECIFICATION OF ERRORS RELIED UPON.

(1) That the said Court erroneously charged the Lippitt Woolen Company as trustee in this action, thereby erroneously holding as not entitled to full faith and credit, with the effect claimed therefor by the said Lippitt Woolen Company and the adverse claimant, the duly authenticated record of the Superior Court for the County of Suffolk and Commonwealth of Massachusetts, annexed to and made a part of the supplemental affidavit of the Lippitt Woolen Company (Record, pp. 27, 31, 1-27), and on which the said Lippitt Woolen Company relied as entitling it to a discharge and on which the said adverse claimant relied as merging the debt and establishing his title and exclusive right to enforce the obligation of the Lippitt Woolen Company.

(2) That the said Court erroneously ruled out as not entitled to full faith and credit, with the effect claimed therefor by the adverse claimant as against these garnishment proceedings, the duly authenticated record and judicial proceedings of the Court of Insolvency for the County of Norfolk and Commonwealth of Massachusetts in the case of Brown, Steese & Clarke, insolvent debtors, to wit, of the debtors' petition in said case, dated August 10, 1889, and filed August 12, 1889; of the warrant, dated August 21, the first publication of the notice of issuing whereof was made on August 23,

1889, and of the assignment to the assignees in insolvency, dated the 4th of September, 1889 (Record, pp. 48-52), all being annexed to the petition of Theophilus King, adverse claimant, and to which reference is hereby made, duly offered in evidence by the adverse claimant as tending to prove and establish the title alleged and claimed by him; also the duly authenticated record of the Court of Insolvency for the County of Norfolk and Commonwealth of Massachusetts, in the same case, of the prayer of the assignees in insolvency of Brown, Steese & Clarke for leave to make sale and conveyance of the claims of Brown, Steese & Clarke against the Lippitt Woolen Company and the Wanskuck Company, with the decree of the court thereon, the instrument being undated, but the decree being allowed November 19, 1890 (Exhibit B, Record, p. 80), and the instrument of sale and conveyance from the assignees in insolvency to Theophilus King, made in accordance therewith, being dated the 19th of November, 1890 (Exhibit D, Record, p. 85), to which reference is hereby made, each duly offered in evidence by the adverse claimant as tending to prove and establish the title alleged and claimed by him. (Record, pp. 127-8.)

(3) That the said Court had no power or jurisdiction to discharge or impair the debt or obligation of the Lippitt Woolen Company as against the non-resident creditors to whom due, and parties claiming under them, so long as those creditors were not served with process or subject to the jurisdiction of the court, and especially as against the Massachusetts Court of Insolvency; and the Rhode Island statute, construed as authorizing such a proceeding, was invalid as a statute impairing the obligation of contract.

(4) That the said statute, so construed, was also invalid as depriving the owners of their property without due process of law.

See also the 7th, 8th, 9th, 10th, 11th, 12th, 13th, and 14th grounds for new trial in the adverse claimant's and alleged trustee's petition for new trial, which, under the law of Rhode Island (The Gen. Sts., c. 251) is practically nothing more or less than an assignment of errors relied upon.

BRIEF OF THE ARGUMENT.

I.

PRELIMINARY.

(a)

This Court has Jurisdiction.

The Rhode Island Supreme Court could not charge the Lippitt Woolen Company as trustee without denying full faith and credit to the Massachusetts proceedings with the effect claimed therefor by the adverse claimant and the alleged trustee.

Green v. *Van Buskirk*, 5 Wall. p. 314; 7 Wall. 145.
Crapo v. *Kelley*, 16 Wall. 610, 620-21.
Huntington v. *Attrill*, 146 U.S. pp. 685-6.
Gt. Western Tel. Co. v. *Purdy*, 162 U.S. 329, 335.

As no attachment exists except by statute and as the Rhode Island Supreme Court construed the Rhode Island statute as authorizing a discharge of the debt as against a non-resident not subject to the jurisdiction of the Court, the statute thus construed is unconstitutional, as a law impairing the obligation of contract, within Article I., Section 10, of the Constitution of the United States.

State Tax on Foreign-Held Bonds, 15 Wall. 300, 320-1, 325-6.
Main v. *Messner*, 17 Or. 78, 84.

Again, the statute so construed is unconstitutional, as depriving the owners of their property without due process of law, within Section I. of the Fourteenth Amendment to the Constitution of the United States.

Louisville & N. R. Co. v. *Nash* (Ala.), 41 L. R. A. 331.

But whether the federal question in the case at bar be as to "full faith and credit," "impairing the obligation of contract," "due process of law," or all three of these, each and all of them turn on a single question, namely, the *jurisdiction* of Rhode Island on one hand and of the Massachusetts courts on the other hand, over the debt of the Lippitt Woolen Company to Brown, Steese & Clarke.

In other words, the only ground on which the Rhode Island courts could deny full faith and credit to the Massachusetts records and judicial proceedings was that of want of jurisdiction. If the obligation of the Lippitt Woolen Company to Brown, Steese & Clarke was property in Massachusetts within the dominion and control of the Court at the domicile of the creditors, it passed under the assignment, and the Massachusetts records and judicial proceedings were entitled to full faith and credit, with the effect claimed for them by the adverse claimant and the alleged trustee. If it was property in Rhode Island within the dominion and control of the Court at the domicile of the debtor and held by the attachment, the Massachusetts records and judicial proceedings were not entitled to full faith and credit with the effect claimed therefor by the adverse claimant and alleged trustee.

(b)

"Full Faith and Credit" v. *Comity.*

It is sometimes said that the courts of one State will refuse to recognize involuntary assignments made under the laws of another State. It is important, therefore, to notice the limitations to the application of that doctrine and power. If the property was within the State and subject to the control and jurisdiction of the Court making the assignment, or was constructively there and had not acquired an established situs in another State, then the assignment was valid and effectual everywhere, whether voluntary or involuntary; and the courts of other States, under the clause of the Constitution requiring full faith and credit, could not refuse to recognize it. This was established by —

Crapo v. *Kelly*, 16 Wall. 610.

That case, too, arose under the insolvency laws of Massachusetts; and it was there held, in effect, that all property of the debtor actually situated in Massachusetts, and all property of the debtor constructively in Massachusetts and which had not acquired an established situs in another State, passed under the assignment. The precise property in question was a vessel owned by citizens of Massachusetts, which at the time of the assignment was at sea and which

returned into a New York port and which was there attached before the Massachusetts assignee obtained actual possession.

The Court, among other things, say: "Personal property which has an established situs in another State is no doubt governed by the *lex loci sitae rei*, so far that it will be governed in its distribution by the laws of the place where found rather than the law of the domicile. *This rule only applies where such property has acquired an established situs. Until that occurs, there can be no conflict of jurisdiction.* . . ."

> "This vessel, 'The Artic,' was upon the high seas at the time of the assignment. The situs at that time decides the question of jurisdiction. The State of New York had no jurisdiction over her until long afterward. No conflict can therefore arise between the laws of New York and of Massachusetts" (21 L. ed., p. 438).

> "An adjudication in bankruptcy partakes in part of the nature of a judgment in *rem* and in part of the nature of a judgment in *personam*. With regard to the estate of the bankrupt debtor, which has been, by the Court's warrant of seizure or by the surrender of the debtor, brought within the jurisdiction of the Court, its orders, decrees and judgments as to the right and title to the property or as to the disposition of it among the parties interested, are binding upon all persons and in every Court."

> LAMAR, J., *Abendroth* v. *Van Dolson*, 131 U.S. p. 71.

(c)

Rhode Island Proceeding Effective, if at all, only as a Proceeding Quasi in Rem.

It is also important to notice that the Rhode Island proceeding was effective, if at all, only as a proceeding *quasi in rem*. The principal defendents were citizens and residents of Massachusetts and were not found or served with process in Rhode Island. As against them, therefore, the proceeding was a mere nullity, except

in so far as property of theirs was actually attached and brought within the jurisdiction of the Court.

Pennoyer v. *Neff*, 95 U.S. 714.

Garnishment is a proceeding *quasi in rem;* and property beyond the jurisdiction of the State cannot be attached or held by garnishment.

The principal defendants having submitted themselves and their property to the jurisdiction and control of the Massachusetts Court of Insolvency, they could not afterwards, by appearing in the Rhode Island Court, confer jurisdiction upon the Rhode Island Court over property in Massachusetts, surrendered to the Massachusetts Court. This is well settled.

Reynolds v. *Stockton*, 140 U.S. p. 273.
Ela v. *Edwards*, 13 Allen, 49.
In re Anderson, Fed. Cas. No. 351..

As a matter of fact, at the time of appearing, they had no property to submit to the jurisdiction of the Rhode Island Court; all their property had actually been assigned and vested in their assignees in insolvency.

Mr. Reno, in a recent article in the "American Law Review," to which we shall refer with pleasure as sustaining our main contentions in the case at bar, fell into a clear error in discussing the decision of the Rhode Island Court in this cause, from failure to notice this fact, together with the further fact that the jurisdiction of the Rhode Island Court over the property in question was raised, not by the principal defendants themselves, but by the garnishee and the adverse claimant claiming title to the property under the assignment made in Massachusetts before the principal defendants had appeared and submitted to the jurisdiction of the Rhode Island Court. The error is so evidently the result of oversight that we do not deem it necessary to discuss it further.

32 Am. L. Rev. pp. 45-6.

II.

Debtor's State had no Jurisdiction Over Debt; Creditors' State did Have.

We have already seen that the only ground on which the Rhode Island Court could deny full faith and credit to the Massachusetts records and judicial proceedings was that of want of jurisdiction; and that this question of jurisdiction, again, turned on the question whether Brown, Steese & Clarke's property in the debt of the Lippitt Woolen Company to that firm was at the domicile of the creditors in Massachusetts and subject to the jurisdiction and control of the Massachusetts Courts, or at the domicile of the debtor in Rhode Island and subject to the jurisdiction and control of the Rhode Island Court.

We propose now, by a brief examination of the principles and authorities, to demonstrate that Brown, Steese & Clarke's property in the debt was in Massachusetts and not in Rhode Island; that the debtor's State had no jurisdiction over the debt, and that the creditors' State did have.

Mr. Reno, in the preface to his work on Non-residents and Foreign Corporations, says:

"There is one principle which permeates the law of 'Non-residents and Foreign Corporations,' so far as it treats of the relation of debtor and creditor. That principle is that, when debtor and creditor are residents of different States, the situs of the debt is the creditor's residence and not the debtor's residence; the creditor's State has jurisdiction over the debt, and the debtor's State has not. The result is that the creditor's State has the power to tax the debt or to discharge it by operation of law; but the debtor's State has not this power, because it has no jurisdiction over the debt."

Reno, Non-Res. vi.

The authorities conclusively establish this proposition. In fact, outside of garnishment, the law is now thoroughly established and unquestioned. We propose, therefore, to examine these branches

where the law is now settled and unquestioned to show that on principle and reason the law cannot be different in garnishment.

(a)

INSOLVENCY LAWS.

The sovereign power of a State over property, or rather the absence of any property, within the State, over which the sovereign power of the State can extend in case of a mere debt or pecuniary obligation of a citizen of that State to a citizen of another State, is clearly illustrated and conclusively established by the cases and authorities on the effect of discharges under State insolvency laws.

For "the proposition lying at the foundation of all these decisions is, that the statute of a State, being without force in any other State, cannot discharge a debt held by a citizen of another State."

MILLER, J., *Denney* v. *Bennett*, 128 U.S. p. 497, 32 L. ed., p. 494, and cases.

"The general principle that our insolvency laws could not affect citizens of other States, to whom liabilities were created that followed the person of the creditors, was well understood and practically applied by the court in numerous cases."

Kelley v. *Drury*, 9 Allen, p. 28.

And, notwithstanding the great general conflict that once existed between the various State courts and the United States Supreme Court, it is now finally established that "the insolvency law of one State has no effect against the citizens of another State *holding claims that follow the person of the creditor, no matter where the debt was contracted or where it was made payable*, unless they place themselves under the jurisdiction of the law, voluntarily becoming parties to the insolvency proceedings."

Perley v. *Mason*, 64 N.H. 6; 3 Atl. 629, 630.
Baldwin v. *Hale*, 1 Wall. 223.

"Insolvent laws of one State cannot discharge the contracts of citizens of other States; because such laws have no extraterritorial operation; and consequently the tribunal sitting under

them, unless in cases where a citizen of such other State voluntarily becomes a party to the proceeding, has no jurisdiction of the cause."

CLIFFORD, J., *Gilman* v. *Lockwood*, 4 Wall. 408, 411, 18: 432, 433.

"There being neither jurisdiction of him (the non-resident creditor) or his debt, the decree is a mere nullity so far as it professes to discharge his debt. To hold otherwise would be to condemn him unheard and to appropriate his property 'without due process of law.' This being so, the question in such cases — the discharge of the insolvent being otherwise valid — is simply one of jurisdiction, and the forum in which the remedy is sought cannot affect the principle or alter the rule."

Main v. *Messner*, 17 Or. 78, 84.

In *Denney* v. *Bennett*, *ubi supra*, MILLER, J., after stating that the proposition lying at the foundation of all the decisions is that the statute of a State, being without force in any other State, cannot discharge a debt held by a citizen of another State, added:

"In other words, whatever the court before whom said proceedings are had may do with regard to the disposition of the property of the debtor, it has no power to release him from the obligation of a contract which he owes to a resident of another State, who is not personally subject to the jurisdiction of the court. . . . The authority to deal with the property of the debtor within the State, so far as it does not impair the obligation of contracts, is conceded: *but the power to release him*, which is one of the usual elements of all bankrupt laws, *does not belong to the legislature where the creditor is not within the control of the court.*" (128 U.S. 498.)

So the power to release him, which is not only one of the usual but one of the necessary elements of all garnishment laws, *does not belong to the legislature* where the creditor is not within the control of the court.

In *State Taxes on Foreign-Held Bonds*, 15 Wall. 300, after show-

ing that the debts, so far as held by non-residents of the State, were property beyond the jurisdiction of the State and therefore not subject to the taxing power of the State, the Court went on to show that the law was also invalid as a law impairing the obligation of contracts. On this point FIELD, J., delivering the opinion of the Court, said:

"It is a law which interferes between the company and the bondholder, and under the pretense of levying a tax commands the company to withhold a portion of the stipulated interest and pay it over to the State. It is a law which thus impairs the obligation of the contract between the parties. The obligation of a contract depends upon its terms and the means which the law in existence at the time affords for its enforcement. A law which alters the terms of a contract by imposing new conditions, or dispenses with those expressed, is a law which impairs its obligation, for, as stated on another occasion, such a law relieves the parties from the moral duty of performing the original stipulations of the contract, and it prevents their legal enforcement. The Act of Pennsylvania of May 1, 1868, falls within this description. It directs the treasurer of every incorporated company to retain from the interest stipulated to its bondholders five per cent. upon every dollar and pay it into the treasury of the Commonwealth. It thus sanctions and commands a disregard of the express provisions of the contracts between the company and its creditors. It is also one of many cases where, under the name of taxation, an oppressive exaction is made without constitutional warrant, amounting to little less than an arbitrary seizure of private property. *It is, in fact, a forced contribution levied upon property held in other States*, where it is subjected, or may be subjected, to taxation upon an estimate of its full value . . .

"The tax laws of Pennsylvania can have no extraterritorial operation; *nor can any law of that State, inconsistent with the terms of a contract, made with or payable to parties out of the State, have any effect upon the contract whilst it is in the hands of such parties or other non-residents.* The extraterritorial invalidity of State laws discharging a debtor from his contracts with citizens of other States, even though made and payable in the State after the passage of such laws, has been judicially determined by this Court. *Ogden* v. *Saunders*, 12 Wheat. 214; *Baldwin* v. *Hale*, 1 Wall. 223. A like invalidity must, on similar grounds, attend State legislation which seeks to change the obligation of such contracts in any particular, *and on*

stronger grounds where the contracts are made and payable out of the State." (15 Wall. 320-1, 325-6.)

The extraterritorial invalidity of the Rhode Island attachment laws, construed as authorizing the alleged attachment in the case at bar, stands on those stronger grounds; for the contract in question was not only one with citizens of another State, but was made and payable out of the State. And those laws are inconsistent with the terms of the contract, for they not only sanction but command a disregard of the terms of the contract and forbid a payment of the debt where and when it was legally payable, and to the parties to whom it was legally payable (for under the laws of Massachusetts the obligation was in effect negotiable, allowing the assignee to sue in his own name, as was in fact done). The Rhode Island attachment laws so construed (and it is obvious that no right of attachment exists unless and except as authorized by some statute) clearly impair the obligation of the contract between the parties.

And generally the cases on discharges in insolvency as against non-resident creditors establish that the debt is not property within the State over which the sovereign power of the State extends, and that consequently the laws of a State, being without extraterritorial force in other States, cannot discharge a debt held by citizens of another State; that the debt follows the person of the creditor, and neither he nor it are subject to the jurisdiction or laws of the State, and that consequently an application of such laws to such debts and contracts also violate one of two prohibitions of the Federal Constitution: One against laws impairing the obligation of contracts, and the other against depriving a party of his property without due process of law.

The cases on insolvency not only negative any power or jurisdiction of the debtor's State over the debt, but they establish affirmatively the power and jurisdiction of the creditor's State over his property in the debt.

The insolvency laws of Massachusetts, as well as those of other States, are based on this assumption.

See *infra*, p. 52

And this assumption is the fundamental ground on which the power of a State to enjoin creditors from prosecuting attachment suits in another State is sustained.

See *infra*, p. 52

(b)

THE STATUTES OF LIMITATIONS.

Cases and authorities on Statutes of Limitations also afford a striking illustration of the extent of the sovereign power of a State over property, and the fundamental and essential difference in this respect between lands and chattels and mere debts.

For these show that lands and chattels are subject to the jurisdiction and laws of the State in which they are located or kept and used, though the owner be a non-resident of the State: that the State has the power to divest the owner's title to such lands and chattels, and to transfer it to an adverse possessor by operation of law under its limitation laws; and that when the adverse possessor has so acquired title under the operation of those laws, it will be respected and enforced in the courts of other States, and must be so respected under the clause of the United States Constitution requiring full faith and credit to be given.

Reno, *Non-Res.*, sec. 305 and cases.
Chapin v. *Freeland*, 142 Mass. 383, 386 and cases.

But debts are mere personal obligations, and the remedy to enforce them is wholly *in personam*. As the effect of most Statutes of Limitations is merely to bar or prevent the remedy and not to extinguish the debt, and remedies are regulated by the law of the place where they are sought, it has been held to follow that such a bar, although the time of prescription has run before suit without interruption, and while both parties resided in the State, will not prevent a remedy sought in a foreign State in accordance with the law of such foreign State.

See *Thorndike* v. *Thorndike* (Ill.), 32 N.E. 510 and cases.

But when the debtor and creditor are residents of different States, the debt is not subject to the jurisdiction and laws of the debtor's

State, and not only will not, but cannot, be discharged or divested by operation of those laws, even though the Statute of Limitations be one that operates to extinguish the debt or claim.

Canadian Pac. Ry. Co. v. *Johnston* (C. C. A. 2d), 61 F.R. 738, 745-6.
Story, *Conflict of Laws* (7th Ed.), Sect. 582, 582 B.

(c)

ADMINISTRATION PROCEEDINGS.

The principles for which we contend are not generally applicable here. *The owner is dead.* There is no immediate personal representative except one created by the State. And one State can create such a representative just as well as another, and no State can give its representative authority to act in another.

See also *Saunders* v. *Weston*, 74 Me. 85, 89, 90.

The vital and fundamental importance of this distinction between the validity of proceedings where the owner is dead and of those where the owner is alive, is, perhaps, nowhere more clearly pointed out than in those cases where courts, under statutory authority or otherwise, have attempted to administer on the property of a living person as if he were dead and not entitled to notice. The owner is alive and cannot be deprived of his property without due process of law. Hence, all such proceedings and statutes have been held absolutely null and void.

Scott v. *McNeal*, 154 U.S. 49.
Lavin v. *Emigrant, etc., Bank*, 1 F.R. 641.
Bolton v. *Schriever* (N.Y.), 18 L. R. A. 242.
Springer v. *Shavender* (N.C.), 33 L. R. A. 772.
Carr v. *Brown* (R.I.), 38 L. R. A. 294 and cases.

Besides, administration proceedings are often very limited affairs, founded not so much on the existence of property as on the necessity for some action within the State. For example, a citizen of one State was indebted to a citizen of another State at the time of the latter's decease, and that indebtedness was evidenced by a bond or other instrument which is wrongfully withheld by citizens of a third State. Under such circumstances, it may be necessary not

only to take out letters of administration at the creditor's domicile at the time of his decease, but also to take out letters of administration in the third State in order to obtain possession of the bond; and also, after obtaining possession of the bond, to take out letters of administration at the domicile of the debtor for the purpose of enforcing payment of the bond.

See *Atty-Gen.* v. *Bouwens*, 4 M. & W. 191-3.
Ins. Co. v. *Woodworth*, 111 U.S. 145-6.

The principle for which we contend, however, is so far applicable that, by the established rule of international law, the descent and distribution of personal property is governed by the law of the domicile of the owner at the time of his decease.

Of course, it is otherwise with respect to real estate. The validity of any will conveying real estate must be determined by the law of the State where the real estate is situated. (*De Vaughn* v. *Hutchinson*, 165 U.S. 566, 569 and cases.)

And if it is valid and sufficient to convey real estate where situated, he cannot be said to have deceased intestate, although the will was invalid and insufficient to convey personal property by the law of his domicile at the time of his decease. (*In re Earhart* (La.), 23 So. 476.)

(d)

TAXATION.

The decisions on taxation afford the most analogous and conclusive tests possible; and, fortunately, here, as in insolvency, the law has been thoroughly established by the decisions of this Court.

In taxation and attachment, the fundamental proposition is precisely the same, viz., whether the thing sought to be taxed or attached is property within the dominion and subject to the legislative power and control of the State. For all subjects over which the sovereign power of the State extends are objects of taxation, and an attachment, as against the non-resident owner not served with process, is a process *quasi in rem*, and is necessarily based on the fundamental proposition that the thing attached is property within the State over which the sovereign power of the State extends.

It requires no argument to show that the law of taxation, as established and declared by this court, is inconsistent with the law of attachment as declared by certain State courts. The decisions of this Court on taxation and of the State courts on attachments are inconsistent and cannot stand together. Two recent articles in the law reviews, wherein the law as to the situs of debts is carefully and thoroughly reviewed, were written by different parties and from directly opposite points of view, and yet both agree on this, that the decisions on taxation and on attachment are absolutely inconsistent and conflicting, and cannot stand together. One argues that the decisions of this Court on taxation are wrong and must be reversed; the other, that the decisions of certain State courts on attachment are wrong and must be reversed.

Conrad Reno, 32 Am. L. Rev. 34.
Hollis R. Bailey, 11 Har. L. Rev. 95, 112.

It will doubtless be urged that the law of attachment differs from the law of taxation, because, while debts, like personal property, are, for most purposes, deemed attached to the person of the owner so as to have their situs at his domicile, "yet this fiction always yields to laws for attaching the property of non-residents, because such laws *necessarily assume* that the property has a situs distinct from the owner's domicile."

MITCHELL, J., *Harvey* v. *Gt. Northern R. Co.* (Minn.), 17 L. R. A. 84, 88-9.

But so do laws for taxing the property of non-residents necessarily assume that the property has a situs distinct from the owner's domicile. A personal tax against the non-residents would be null and void. The question in each case is, Can the State fix the situs of the debt at the domicile of the debtor, in one case for the purpose of taxation, in the other for the purpose of attachment? If it cannot for the purpose of taxation, it cannot for the purpose of attachment. The power of the State to fix the situs of the debt at the domicile of the debtor for its own support by taxation is at least as great as the power of the State to fix it there for the protection of one of its citizens. This is self-evident. In other words, if it isn't property that can be taxed, it isn't property that can be attached.

Now, in some comparatively recent and what may be considered as leading cases maintaining that the situs is at the domicile of the debtor,

Bragg v. *Gaynor* (Wis.), 21 L. R. A. 161,
Newfelder v. *German Am. Ins. Co.* (Wash.), 22 L. R. A. 287,

the question of situs is very learnedly and exhaustively discussed; but the Court *assumes*, and its whole argument is based upon the *assumption, that the debt was property within the State at the domicile of the debtor*, over which the sovereign power of that State extended. This, of course, was the very thing to be proved, and the real and only question in the case.

Now, the cases and decisions on taxation show:

(*a*) That the right of taxation vested in the State is practically unlimited, save that it must be confined to subjects within the jurisdiction of the State.

In *McCulloch* v. *Maryland*, 4 Wheat. 428, 429, the Court say:

> "All subjects over which the sovereign power of a State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation."

In *State Tax on Foreign-Held Bonds*, 15 Wall. 300, 319, the Court say:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business. . . . Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited, while the subjects to which it applies are within her jurisdiction."

In *St. Louis* v. *Wiggin's Ferry Co.*, 11 Wall. 423, 430, the Court say:

> "Where there is jurisdiction neither as to person or property, the imposition of a tax would be ultra vires and void. If the legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manne as the persons and property within its own limits and subjec

to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

In *Pullman Pal. Car Co.* v. *Penn.*, 141 U.S. 18, 22, the Court say:

"No general principles of law are better settled, or more fundamental, than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of any other State."

(*b*) That the doctrine expressed in the maxim, "*Mobilia sequuntur personam*," is not allowed to stand in the way of the taxing power in the locality where the property has its actual situs and the requisite legislative jurisdiction exists.

In *St. Louis* v. *Wiggin's Ferry Co.*, *ubi supra*, the Court say:

"In the eye of the law personal property, for most purposes, has no locality. . . . In a qualified sense it accompanies the owner wherever he goes, and he may deal with it and dispose of it according to the law of his domicile. If he die intestate, that law, wherever the property may be situated, governs its disposition, and fixes the rights and shares of the several distributees. . . . But this doctrine is not allowed to stand in the way of the taxing power in the locality where the property has its actual situs, and the requisite legislative jurisdiction exists. Such property is, undoubtedly, liable to taxation there in all respects as if the proprietor were a resident of the same locality."

In *Pullman Pal. Car Co.* v. *Penn.*, *ubi supra*, the Court say:

"For the purposes of taxation, as has been repeatedly affirmed by this Court, personal property may be separated from its owner; and he may be taxed on its account at the place where it is, although not the place of his own domicile, and even if he is not a citizen or a resident of the State which imposes the tax."

(*c*) That a mere debt or pecuniary obligation of a citizen of the State to a citizen and resident of another State has no "actual situs" and is not property at the domicile of the debtor over which legislative power of the debtor's State extends.

In *State Tax on Foreign-Held Bonds*, 15 Wall. 300, this precise point was decided. The case arose under a Pennsylvania statute, by which it was sought to tax in Pennsylvania debts due from a Pennsylvania corporation to non-residents of that State, such debts being evidenced by bonds of the corporation, and the payment of the debt or bond secured by mortgage upon property situated in that State. The Supreme Court of Pennsylvania held that the tax was valid. But, on writ of error, this judgment was reversed by Supreme Court of the United States, which held that in so far as the debts were due to non-residents of the State they were property beyond the jurisdiction of the State, and that the law in question was a law impairing the obligation of contract. FIELD, J., delivering the opinion of the Court, said:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property and business. . . .
>
> "Corporations may be taxed, like natural persons, upon their property and business. But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms. All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. *Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations in numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement.*
>
> "The bonds issued by the railroad company in this case are undoubtedly property, but property in the hands of the holders, not property of the obligors. So far as they are held by non-residents of the State, they are property beyond the jurisdiction of the State. The law which requires the treasurer of the company to retain five per cent. of the interest due to the non-resident bondholder is not, therefore, a legitimate exercise of the taxing power. . . .

"It is only one of many cases where, under the name of taxation, an oppressive exaction is made without constitutional warrant, amounting to little less than an arbitrary seizure of private property. It is, in fact, a forced contribution *levied upon property held in other States*, where it is subjected, or may be subjected, to taxation upon an estimate of its full value. . . .

"It is undoubtedly true that the actual situs of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the State in which it may be taxed. . . . But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicile of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidence of debt are not separated from the possession of the owners." (15 Wall. 319-20, 321, 323-4.)

The same question afterwards arose in Tennessee, in *So. Nashville St. R. Co.* v. *Morrow*, 87 Tenn. 406, 2 L. R. A. 853; and the language of the Tennessee Court (by LURTON, J., now of the United States Circuit Court of Appeals for the Sixth Circuit) was equally emphatic and pointed.

The Court said:

"The power of the State must then rest upon the proposition that these bonds are constructively within the jurisdiction of the State, although their owners have no residence here. When a non-resident is the owner of tangible property, real or personal, which has its actual situs here, there is no doubt but that the jurisdiction of the State over the property for the purposes of taxation is complete. This is true notwithstanding the fiction of the law that personal property has no situs but that of the owner. In such cases the fact that the actual situs of such personality is here, authorizes the taxation. . . .

"The bonds sought to be taxed are undoubtedly property, and personal property. They are, however, intangible property, and can have no actual situs. They are the mere evidence of debts by the company to the holder or owner thereof. The bond is evidence to support a demand for the payment of the money. Its destruction by accident would not discharge the debt. The debt would remain and might still be demanded and recovered. . . .

"The bond is property, but it is the property of the owner—the creditor, and not the debtor. . . .

"Bonds are undoubtedly subject to taxation. But when? by

what government? The answer cannot be doubtful. They can only be taxed by the government having jurisdiction of the owner. The situs of intangible personals, such as bonds, notes, accounts, etc., is necessarily the situs of the owner. . . .

"To sustain the jurisdiction of the State over these bonds for the purpose of taxation, we must ignore or contradict the legal fiction which ascribes to such property the situs of the owner. If the actual situs upon examination should prove to be here, then the legal fiction must yield. *But the actual situs is not here*; and to sustain the jurisdiction we must create a fictitious or constructive situs, based upon the notion that debts are in some way property in the hands of the debtor, or that, the security for the debt being here, therefore the debt is here. *By no sort of fiction can the jurisdiction of the State be held to extend to the property which a non-resident has in a debt which he holds against a resident. The creditor cannot be taxed, because he is not within the jurisdiction, and his property cannot be taxed, because it is not within the jurisdiction.*" (2 L. R. A. 861-2.)

(*d*) That it is property in the creditor's State over which the legislative power of that State extends.

In *Kirtland* v. *Hotchkiss*, 100 U.S. 491, this precise point was decided. After referring to cases above to the effect that, unless restrained by the provisions of the Federal Constitution, the power of the State as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction, HARLAN, J., delivering the opinion of the Court, said:

"Plainly, therefore, our duty is to inquire whether the Federal Constitution prohibits a State from taxing, in the hands of one of its resident citizens, a debt held by that citizen upon a resident of another State, such debt being evidenced by the bond of the debtor, and the payment of the debt or bond secured by deed of trust or mortgage upon real estate situated in the State in which the debtor resides.

"The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the State imposing the tax. The debt which he holds against the resident of Illinois is property in his hands. 15 Wall. 320 (82 U.S., XXI., 187). It constitutes a portion of his wealth, and from that wealth he is under the highest obligation, in common with his fellow

citizens of the same State, to contribute for the support of the government whose protection he enjoys.

"The debt in question, although a species of intangible property, may, *for purposes of taxation, if not for all purposes*, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is, at best, only evidence of the debt, not the debt itself. . . .

"The debt, then, having its situs at the creditor's residence and constituting a portion of his estate there, both he and the debt are, for purposes of taxation, within the jurisdiction of the State. . . . Such taxation violates no provision of the Federal Constitution." (100 U.S. 498-9.)

In *Nevada Bank* v. *Sedgwick*, 104 U.S. 111, it was held that, under the second clause of Section 3408 of the Rev. Sts., the capital of a State bank, invested abroad and in foreign countries, could be taxed by the United States. WAITE, C.J., delivering the opinion, said:

"As long ago as 1819 it was said by this Court, speaking through Chief Justice Marshall, in *McCullough* v. *Maryland*, 4 Wheat. 429, that 'All subjects over which the sovereign power of a State extends, are subjects of taxation'; and, acting on this principle, we held recently, in *Kirtland* v. *Hotchkiss*, 100 U.S. 491, that a State might tax her resident citizens for debts held by them against non-residents and secured by mortgage on property in another State. That seems to us conclusive of this case. . . .

"In the absence of averments to the contrary, we must presume they (the investments) were such as banks usually make in doing a banking business, and that their legal situs was at the home office of the corporation. We need not consider, therefore, whether, if they had been made in fixed property subject exclusively to another jurisdiction, a different rule would apply." (104 U.S. 111-12.)

"The thing taxed is a debt, a species of intangible property, incapable of having an actual situs independent of its owner. . . . It might undoubtedly be taxed by the State when held by a resident thereof. The debt, then, having its situs at the creditor's residence, *both he and it are*, for the purpose of taxation, within the jurisdiction of the State."

Boyd v. *Selma* (Ala.), 11 So. p. 396.

(e)

GARNISHMENT OR ATTACHMENT.

Here, so far as respects mere debts due to citizens of another State, the decisions are hopelessly conflicting and the law in the utmost confusion,— a pretty good indication that in attachment, as well as in taxation and insolvency, the court and State at the domicile of the debtor have no rightful jurisdiction or dominion over the debt, or power to affect or discharge it, as against the non-resident creditor. But the courts of one State assert the power, which the courts of another State refuse to recognize; and even those courts that at all recognize the power when asserted by the courts of another State, cannot agree as to what extent it is to be recognized, or on what grounds, if any, it is to be supported. The result is, that in numerous cases the garnishee has been compelled to pay the same debt twice. As the Supreme Court of Illinois say:

> "It is of course true that every State must enforce its own laws within its own borders for the protection of its own citizens, but either the law, or the construction of it by the courts, in one or the other of the States is contrary to natural justice, which requires of a garnishee standing indifferent between creditors contending in different States for the same debt, the payment of that debt more than once."
>
> *Lancashire Ins. Co.* v. *Corbetts* (Ill.), 46 N.E. 631, 632.

And it is significant that most of the conflict and confusion has arisen within the last twenty years, or since the decision in *Pennoyer* v. *Neff*, 95 U.S. 714. In fact, the practice was taken from the custom of London, which grew up without statutory authority and without any other jurisdictional foundation than that might makes right; and the practice at first and for a long time was so generally adopted by statute in this country as to pass substantially without challenge. Prior to *Pennoyer* v. *Neff*, but little, if any, argument was attempted in its support further than some general assertion to the effect that such was the custom of London, or that by such garnishment "a chose in action was arrested," or that such garnishment "created a lien upon the debt, which the courts of other governments, *if they*

recognize such proceedings at all, cannot fail to regard." The prestige of some of the courts that were first called upon to construe the law in this country, those courts looking for the most part to the custom of London and decisions thereon for precedent, had great influence also on the uniformity of decisions. And the practice received a strong impetus from the tribal policy of each State to look out for its own first, which sometimes led State courts to overstep their rightful jurisdiction and power, especially in behalf of domestic creditors.

But of late, and especially since the decision in *Pennoyer* v. *Neff*, and the decisions on taxation and insolvency to which we have already referred, the subject has been a matter of frequent discussion both by courts and writers, but with the result as above stated. The time was never more ripe or opportune than now for a correct declaration of the law. In fact, the ultimate principles on which must rest such a decision as that for which we contend have already been fully established by this Court, the practice of some of the States and State courts to the contrary notwithstanding. And it has long been recognized by writers and the profession that the only hope of uniformity rests in the Federal Court.

32 Am. L. Rev. 54.
22 L. R. A. 287, n.

The question is constitutional as well as jurisdictional. This is clearly pointed out in —

Ogden v. *Saunders*, 12 Wheat. 213, 359.

. It is not a question between nations, or citizens of different nations, between whom there are no restrictions or limitations other than such as arise from the exercise of mere comity or from fear of international complications and war. If that were the question, the courts might be without power to limit or restrain any action of the legislature. As Mr. Justice BRADLEY said, in *United States* v. *Erie R. Co.*, 106 U.S. 330: "So far as the power of Congress is concerned, regarded in reference to any power the courts have to limit or restrain it, I see no reason why Congress may not lay a tax upon any property upon which the government can lay its hands, whether

within or without the jurisdiction of the United States. . . . It might create great complications with foreign governments, it is true, and involve the country in war; but Congress has the power, if it chooses to take the responsibility, of creating or giving occasion to such complications. The responsibility rests upon it alone. So if, in taxing money due from citizens of the United States to foreign citizens, any complications arise with the governments to which the latter are subject, Congress alone has the responsibility, and is the only department of our government which has a right to take such a responsibility."

But the question in the case at bar is one between the several States of the union or citizens of different States; and, as pointed out in numerous decisions of this Court, the powers of the several States as against citizens of other States are, and always have been, very much limited and restricted by certain provisions of the Federal Constitution, and are becoming more and more limited and restricted as the operation and effect of those provisions become better appreciated and understood. In view of these limitations and restrictions on the powers of the several States, it is at once obvious that the custom of London and decisions thereon, as well as such cases as the following, which, so far as relevant, have to do with international rights where there are no such limitations and restrictions, are to be eliminated from our consideration:

Harrison v. *Sterry*, 5 Cranch, 289 (1809).
Blake v. *Williams*, 6 Pick. 286 (1828).
Very v. *McHenry*, 29 Me. 206, 214-15 (1848).
May v. *Breed*, 7 Cush. 15 (1851).
Peck v. *Hibbard*, 26 Vt. 698, 704 (1854).
Long v. *Hammond*, 40 Me. 204 (1855).
Pattison v. *Wilbur*, 10 R.I. 448 (1873).
United States v. *Erie R. Co.*, 106 U.S. 327, 330 (1882).
Hilton v Guyot 159 U. S. 113 (1894)

The question is also jurisdictional as well as constitutional. And since the decision in *Pennoyer* v. *Neff*, it has come to be well understood that, to give validity to such proceedings *quasi in rem*, property of the non-resident must be found within the State and brought within the jurisdiction of the court at the commencement of the proceedings.

Reno, Non-Res., sec. 218 *et seq.*, 286.

In respect of lands and chattels, the whole matter is plain and the law well settled; for these are subject to the jurisdiction and laws of the State where located and kept, even though the owner is a non-resident; and the State has power to divest the owner's title to such property by operation of law under its attachment and execution laws, just as under its limitation, insolvency and taxation laws. And the title thus acquired is valid, and must be respected, under the clause of the Constitution requiring full faith and credit to be given.

Green v. *Van Buskirk*, 7 Wall. 139.
Reno, Non-Res., secs. 25, 174, 215, 505.

But how in respect of debts? It was early declared that "all debts follow the person, not of the debtor *in respect of the right of property*, but of the creditor to whom due."

Ld. HARDWICKE, *Thorne* v. *Watkins*, 2 Ves. Sr. 35 (1750).

It is obvious that the thing which is taxed or attached is not the "debt," but rather the opposite and correlative of "debt," namely, the "credit," that is, the creditor's property in the debt. The Massachusetts Statute states it correctly: "Goods, effects and *credits*." (Mass. Pub. Sts. c. 183, sec. 21.) The debt is not property but rather the absence of property. As this Court said, in *Murray* v. *Charleston*, 96 U.S. 432: "Debts are not property. The non-resident cannot be said to be, in virtue of a debt due to him, a holder of property within the city." (96 U.S. 440.)

And it has been settled by this Court that for the purpose of taxation, if not for all purposes, the situs of a debt (that is, the creditor's property therein) is at the domicile of the creditor and not at the domicile of the debtor; and that when held by the non-resident the debt has a situs, is property, and can be taxed in the creditor's State; but has no situs, is not property, and cannot be taxed in the debtor's State.

That is decisive of the case at bar, unless it can be established, either (1) that the situs of the debt (that is, the creditor's property therein) for attachment is different from its situs for taxation, or

(2) that jurisdiction in garnishment by foreign attachment does not depend upon the situs of the debt, or the *res*, being within the territorial jurisdiction of the court. Some courts have attempted to sustain such so-called attachments upon one of these grounds, and some upon the other. We propose now to show that the

Situs of debt for attachment is same as its situs for taxation,

that the debt in question was not property in Rhode Island, that the transaction out of which the indebtedness arose was not even business in Rhode Island, that jurisdiction in garnishment in foreign attachment is dependent upon the *res* being within the territorial jurisdiction of the court, and that such so-called attachment proceedings at the domicile of the debtor without personal jurisdiction of the non-resident creditor are without jurisdiction of the person or the *res* and not entitled to full faith and credit in the courts of another State:

(*a*) *No separate situs can be assumed.*

The first reason or argument usually urged in support of such a difference or distinction is this: "Because such (attachment) laws necessarily assume that the property has a situs distinct from the owner's domicile."

> *Harvey* v. *Gt. Northern R. Co.* (Minn.), 17 L. R. A. 84, 88-9.
>
> *Wyeth Hardware & Mfg. Co.* v. *Lang* (Mo.), 27 L. R. A. 651, 653.

But, as we have already shown (*supra*, p. 21), the same is also true of taxation laws, especially laws taxing property belonging to non-residents. But the decision of this Court on taxation laws passed on that same assumption was that the debt could have no situs at the domicile of the debtor and was not property there. As stated by Mr. Justice FIELD, in *State Tax on Foreign-Held Bonds*, debts "can have no locality separate from the parties to whom they are due." (15 Wall. 320.) And as stated by LURTON, J.:

> "By no sort of fiction can the jurisdiction of the State be held to extend to property which a non-resident has in a debt which he holds against a resident. The creditor cannot be taxed, because he is not within the jurisdiction, and his property cannot

be taxed, because it is not within the jurisdiction." (See *ante* pp. 23-4.)

The making of the contract was not even business in Rhode Island.

The making of the contract out of which the indebtedness arose was not even business in Rhode Island, and in such transaction Brown, Steese & Clarke never in any way subjected themselves or their property in the debt to the regulation or control of Rhode Island; for the wool was sold and delivered in Massachusetts, and the purchase price for the same was there payable when due.

Allgeyer v. *Louisiana*, 165 U.S. 578.
Holder v. *Aultman*, 169 U.S. 81.
Caesar v. *Capell*, 83 F.R. 403, 410-11.
Sullivan v. *Sheehan*, 87 F.R. 247.
Eastern Bldg. & Loan Ass'n v. *Bedford*, 88 F.R. 7, 12.
Neal v. *New South Bldg. & Loan Ass'n*, (Tenn.) 46 S. W. 755.
Norton v. *Union Bank & Tr. Co.* (Tenn.), 46 S. W. 544.

Further, it was never conceded by this Court or this country, if indeed by any other, that one nation or State could discharge a contract, not made or to be performed within the State, when held by a non-resident. The contrary was always uniformly held.

McMillan v. *McNeill*, 4 Wheat. 209.
Ogden v. *Saunders*, 12 Wheat. 255, 293, 315, 331, 333, 368.
STORY, Circuit Justice, *Van Reimsdyk* v. *Kane*, Fed. Cas. No. 16,871; s.c., 9 Cranch, 153.
WASHINGTON, Circuit Justice, *Green* v. *Sarmiento*, Fed. Cas. No. 5,760.
Kelly v. *Drury*, 9 Allen, p. 28.
STORY, Confl. of Laws, (7th ed.) sec. 342 and cases.
DICEY, Confl. of Laws, (Am. Notes by J. B. Moore), pp. 449 *et seq.*, Rules 112, 113, and cases.

It was only when the contract was made or to be performed within the State, as in *Ogden* v. *Saunders*, that any real conflict or contest arose as to the want of power and jurisdiction of the State to discharge the contract as against the non-resident. And in *Ogden* v. *Saunders*, and subsequent cases, the conclusion was that the State

had no power or jurisdiction to discharge the contract, even though made and to be performed within the State.

Ogden v. *Saunders*, 12 Wheat. 213.
Baldwin v. *Hale*, 1 Wall. 223.
Gilman v. *Lockwood*, 4 Wall. 409.

Nevertheless certain courts have attempted to preserve in garnishment that distinction between contracts made or to be performed within the State and those made or to be performed elsewhere, holding the former subject to garnishment and the latter not.

See *McBee* v. *Purcell N. Bk.* (Ind. Ter. App.), 37 S.W. 55.
Smith & Co. v. *Taber* (Tex. Civ. App.), 40 S. W. 156.
Walker v. *Fairbanks*, 55 Mo. App. 478.
Hamilton v. *Plumer* (Mich.), 34 N.W. 278.
Am. Cent. Ins. Co. v. *Hettler* (Neb.), 56 N.W. 711.

But we believe that here also, as in insolvency, the same principle and rule will have to be applied to both classes of contracts, viz., that the court without personal jurisdiction of the non-resident creditor has no power or jurisdiction to discharge the contract, whether made or to be performed within or without the State. And the power or jurisdiction of the State or court to make effectual an attachment of a debt due to a citizen of another State, depends wholly upon its power to discharge such debt as against the non-resident, or to authorize performance otherwise than as the obligation of the contract requires. If it has no such power to discharge the debt, or impair the obligation of contract, the garnishment is without force or effect.

(*b*) *That creditor could have sued debtor at latter's domicile does not make it property there for attachment any more than it did for taxation.*

The second reason or argument usually assigned is, as stated by the Supreme Court of Rhode Island, that "as defendants could have maintained an action against the garnishee in this State for the recovery of the debt in question, then said debt was within this State, and subject to an attachment here." (Record, p. 133 and cases there cited.)

As a matter of fact the assumption that the defendants could have maintained an action in Rhode Island against the garnishee at the time of the garnishment is contrary to the fact; for having submitted themselves and their property to the jurisdiction of the Massachusetts Court of Insolvency, they could not have maintained an action in Rhode Island in their own behalf and would have been enjoined had they attempted it. And there was still another reason why they could not have maintained an action in Rhode Island, namely, that no right of action had accrued in Massachusetts even, where the debt was payable when due; *a fortiori*, had no right of action accrued in Rhode Island. There was a special limitation in respect of the time and place of payment. None of it was payable until on or after September 12, 1889, and it was then payable in Boston. It could not, therefore, be said to be payable or demandable elsewhere, at least not until after there had been a default or failure to pay at the time and place when and where payable. No such default had occurred. The debt was therefore not suable or demandable in Rhode Island, and on this ground alone was clearly not attachable.

But this argument that a debt is attachable wherever suable is the one most generally advanced and relied upon. The fallacy of the argument is this: The mere fact that defendants had a right to go into Rhode Island themselves and sue there on their claim and so subject it to the laws and jurisdiction of the courts of Rhode Island, would not make it property in Rhode Island. A party can send his personal property into another State and so subject it to attachment in that State; but it is obvious that until he does no one can attach it there. Surely no one could attach it in that State merely because the owner had a right to send it there. So in the case of a debt, undoubtedly the creditor has a right to take proceedings in the debtor's State; and if he does so, he subjects his claim to the jurisdiction of the laws and courts of that State. As we pointed out under limitation laws, the statutes of limitations of one State can have no effect on a debt due from a citizen of that State to a citizen of another State; but the creditor may bring action in the debtor's State, and if he does he subjects his claim to the limitation laws and becomes bound by the bar of the statute. But the mere fact that he has the right to

subject his claim to those laws does not authorize creditors of his to do so. So, again, one State cannot, by its insolvency laws and proceedings thereunder, discharge a debt due to a creditor who is a citizen of another State; but that creditor may appear in the insolvency proceedings, and if he does he subjects his claim to the insolvency laws and proceedings and so becomes bound by the discharge. But the mere fact that he has this right, does not give creditors of his the right to do so. There is no difference in this respect between debts and other personal property. Until the owner has brought his property within the dominion of the laws of the State, it is not attachable there.

The Supreme Court of Minnesota, in a recent case, have well said:

> "It is true that this defendant might have brought an action in this State against this insurance company to recover for this loss, and have obtained service by serving the summons on the insurance commissioner. But this does not prove that this debt has always had a situs in this State. In the first place, that action would be in personam, not in rem; and, for the purpose of such an action, it is immaterial where the situs of the debt is. In the next place, the creditor may, by his voluntary act, give the debt a situs also at some place other than that of his domicile. *He may, so to speak, take the debt with him for the purpose of bringing suit upon it. But a third person claiming to be a creditor of such creditor cannot do this.* Such a stranger has no power to change the situs of the debt, or give it a situs at a place where it would not otherwise have it. In our opinion, the debt in question had no situs in this State, and the Court below had no jurisdiction."
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> *Swedish-Am. Natl. Bank* v. *Bleecker* (Minn.), 75 N.W. 740, 742.

In *Cent. Tr. Co.* v. *Chattanooga, R. & C. R. Co.*, 68 F.R. 685, CLARK, District Judge, refused to follow the decisions of the Supreme Court of Tennessee, and, on the point now under consideration, said:

> "In *Railroad Co.* v. *Barnhill*, importance is apparently attached to the fact that the principal debtor might have come to Tennessee and sued the company for his wages in the courts of Tennessee. But the action on that debt is transitory, and suit may be maintained in any jurisdiction where process can be served on the debtor. This is a question quite apart from the situs of the debt, where seizure of property takes the place of

the regular process as basis of jurisdiction. In cases like this the question is not where the party may sue, but where the defendant's property is for the purpose of levy in the absence of personal process served." (68 F.R. 693.)

(c) *Attachment laws cannot "fix" the situs of the debt at the domicile of the debtor any more than can taxation laws.*

It has been suggested that the legislature might, for the purpose of attachment, "fix" the situs of the debt at the domicile of the debtor.

Williams v. *Ingersoll*, 89 N.Y. 509, 523-4, EARL, J.
Douglas v. *Phoenix Ins. Co.* (N.Y.), 20 L. R. A. 118, 121-2, ANDREWS, C.J.
Swedish-Am. Natl. Bank v. *Bleecker* (Minn.), 75 N.W. 740, 741.

In *William* v. *Ingersoll*, which is always cited as authority for the suggestion, the Court in explanation say:

"The law seems to be thus settled for the reason that it would be unjust to compel the debtor to pay his debt twice." (89 N.Y. 524.)

That is, the attachment laws of the State cannot really change the actual situs or make that property within its borders which is not property there; but if the laws of one State authorize such an alleged attachment on the assumption that it is property within the State, the courts of other States will probably recognize such proceedings rather than compel the debtor to pay his debt twice.

The decision in the above cases afford about the best answer to the suggestion; for in each of the cases the statement was not only a mere dictum, but the Court expressly refused to recognize such a situs thus fixed by the attachment laws of Connecticut in the first case, the attachment laws of Massachusetts in the second, and by the attachment laws of its own State in behalf of one of its own citizens in the third. And in the first two cases the Court refused to recognize such so-called attachment proceedings in courts having jurisdiction of the debtor, even though the debtor should be compelled to pay twice.

In *Douglas* v. *Phoenix Ins. Co.*, ANDREWS, C.J., said:

"No State can subject either real or personal property out of the jurisdiction to its laws. . . . It is a fundamental rule that in attachment proceedings the *res* must be within the jurisdiction of the Court issuing the process, in order to confer jurisdiction. In the case of movables, their seizure under the attachment shows that their actual situs is within the jurisdiction. But in respect of intangible interests, debts, choses in action, bonds, notes, accounts, interests in corporate stocks and things of a similar nature, the question whether the *res* is within the jurisdiction of the sovereignty where the process is issued is not so readily determined. The general rule is well settled that the situs of debts and obligations is at the domicile of the creditor. But the attachment laws of our own and of other States recognize the right of a creditor of a non-resident to attach a debt owing or due to him by a person within the jurisdiction where the attachment issues, and to this extent the principle has been sanctioned that the laws of a State for the purpose of attachment proceedings may fix the situs of a debt at the domicile of the debtor." (33 N.E. 940.)

Nevertheless, as already stated, the Court refused to recognize the situs fixed by the attachment laws of Massachusetts.

The above cases concede, nay even hold, that the real situs of the debt is at the domicile of the creditor. Now, of late, certain courts of the highest respectability, seeing that the situs is at the domicile of the creditor and that it is not at the domicile of the debtor and cannot be fixed there, in order to sustain garnishment by foreign attachment have taken the position that jurisdiction in such cases does not depend upon situs nor upon the *res* being within the jurisdiction of the Court. We notice this position and the cases in support of it under (*d*) *infra*. While we cannot accede to that position, their criticism of the suggestion under consideration is absolutely unanswerable.

Thus, in *Natl. F. Ins. Co.* v. *Chambers* (N.J. Eq.), 32 Atl. 663, PITNEY, V.C., after reciting the passage above quoted, says:

"Now, here I venture to suggest that the learned judge here concedes the whole question, because, as I have above observed, if the situs of the debt is at the domicile of the creditor, then it never can come under the jurisdiction of a foreign attachment against him, because he is always, in such cases, out of the jurisdiction of the court issuing the attachment.

"To admit that jurisdiction may be exercised over a debt due to a non-resident is either to admit that the presence of the *res* within the jurisdiction is not necessary, or else to assert — as, in fact, the chief judge does assert — that a State may arbitrarily change the actual situs of a chose in action not within its jurisdiction, and declare it to be within the jurisdiction, contrary to the fact. There is no escape from this dilemma." (32 Atl. 672-3.)

And in *Mooney* v. *Buford, etc., Mfg. Co.* (C. C. A. 7th), 72 F.R. 32, the Circuit Court of Appeals for the Seventh Circuit criticize the suggestion even more sharply and decisively, as follows:

"The decisions cited to sustain it proceed upon the assumption — which we think clearly erroneous — that jurisdiction in garnishment against a debtor of the principal defendant, who cannot be personally served with process, depends, when tangible property has not been attached, upon the situs of the debt. The assumption makes garnishment impossible in cases of foreign attachment, whether the debtor sought to be reached is a resident or a non-resident. Escape is sought from this result by saying, as in *Douglas* v. *Ins. Co., supra*, 'that the laws of a State, for the purposes of attachment proceedings, may fix the situs of a debt at the domicile of the debtor.' That is a sheer fiction which, if resorted to at all, may just as well be enlarged so as to include foreign corporations whenever they are doing business under agreement that process may be served upon their agents as if upon themselves. But, manifestly, the essentials of jurisdiction cannot rest upon a fiction, and if, in this class of cases, the situs of a debt or chose in action is essential, it must be the real situs. It is not in the power of the legislature of a State to affect the rights of non-residents, against their consent, by declaring that, of two things which are not identical, one shall be deemed to be the equivalent of the other,— certainly not by declaring that something out of the State shall be deemed to be within it." (72 F.R. 38.)

In *Cent. Tr. Co.* v. *Chattanooga, R. & C. R. Co.*, 68 F.R. 685, CLARK, District Judge, in a very careful and well reasoned opinion, holding that the situs of the debt even for the purpose of attachment proceedings was at the domicile of the creditor and not at the domicile of the debtor, on this point said:

"It is to be remembered that this question of jurisdiction, and for that purpose the situs of the res, is vital and fundamental.

> And, where a strictly jurisdictional fact is wanting, it cannot be supplied by mere assertion or assumption. The fact must legally and rightfully exist. Or, as the Court declared in *Everett* v. *Walker* (Colo. App.), 36 Pac. 616, in an able discussion of this question: 'It is as impossible by judicial construction as by legislative enactment to declare that property out of the State, having a domicile with the creditor or the debtor, is within the limits of the sovereignty for the purpose of a levy.' (68 F.R. 691.)"

The Supreme Court of Alabama has wholly repudiated such so-called attachments in the most sensible, if not the best reasoned, opinion to be found in all the cases. Among other things, the Court considered and conclusively answered the above suggestion; for as that Court points out, if the debt has not already a situs within the State, the legislature cannot give it one; if it has a situs, then it needs no "fixing." The Court say:

> "If it be conceded that a debt due by a resident of or a corporation doing business in one State to a resident in another State is not properly within the State of the debtor's residence, no legislation by the latter State can give it a situs there. . . . If it has no situs within the debtor's State, in the absence of legislation, any legislation attempting to give it such situs, or to prescribe the manner of service on either the debtor or the non-resident, by which jurisdiction over it may be acquired, unless by personal service on the creditor within the State or his voluntary appearance, would be as nugatory and ineffectual to dispose of the creditor's property in the debt as would be legislation attempting to acquire jurisdiction over tangible property situated without the State. The subject matter of such legislation, namely, the property over which it is attempted to acquire jurisdiction, is entirely beyond the power and control of the State. In the view we take of the question, the condemnation of a debt due to a non-resident, without personal service within the State of the suit on the debtor or owner of the debt, or his voluntary appearance, is without due process of law, and it seems manifest that a State cannot make that due process of law which is not such."
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> *Louisville & N. R. Co.* v. *Nash* (Ala.), 41 L. R. A. 331-2.

As pointed out by the Supreme Court of Ohio, the legislature may fix the situs of a debt as between citizens of the State but not as against citizens of another State. The Court say:

"It is claimed, however, that without physical seizure of the property in Lucas county, the marshal had no jurisdiction to order the payment of the amount due from the garnishee into Court, as no personal service was obtained upon the defendants in the action. A number of cases are cited in support of this proposition. But they are all cases where the defendant was a non-resident of the State in which action was commenced.

"It may be conceded that the credits of a non-resident debtor, without personal service upon him, cannot be attached in this State by simply serving the process of garnishment upon his debtor residing within the jurisdiction of the Court issuing the process. That would be to give the laws an extra territorial effect.

"In *Railroad Co.* v. *May*, 25 Oh. St. 347, it was held that the indebtedness of the company to a person residing in this State could be attached in the courts of a sister State without personal service, but this seems opposed to the recent decision of the Supreme Court of the United States, in *Cole* v. *Cunningham*, 133 U.S. 107; Reno, Non-Res., Sec. 140. A number of State courts take the same view. Id. Sec. 216. But as between citizens of the State, subject to its laws, the case is wholly different."

Root v. *Davis* (Ohio), 36 N.E. 670.

This was fair warning to the courts of other States that the Supreme Court of Ohio would no longer recognize such so-called attachments and discharges of debts due to citizens of that State.

The Supreme Court of Illinois considered a suggestion similar to that under consideration and answered as follows:

"The still further contention of counsel for appellants that our statute changes the common law rule whereby personal estate follows the person of the owner, and is distributed pursuant to the law of his domicile at the time of his death, is sufficiently answered by the fact that the statute has, by its own terms, reference only to 'property in this State,' sec. 1, ch. 39, Rev. Stats. 1874. And since the only property right which there can be in a debt is a mere right to receive payment of it, it is impossible that there can be anything of a tangible nature connected with such right which can occupy locality; and so the property right must accompany and remain with the person of the owner of the debt, and therefore it cannot be in this State when the domicile of the owner is in another State."

Cooper v. *Beers* (Ill.), 33 N.E. 61, 62.

See also *Consol. Tank Line Co.* v. *Collier* (Ill.), 35 N.E. 756, 757.
Holbrook v. *Ford* (Ill.), 27 L. R. A. 328.

Certain of the States, in the time of the Revolution, attempted to fix the situs of debts at the domicile of the debtors by their confiscation laws, requiring the debtor to pay the same to the State; but, at the conclusion of peace, England insisted (as she is very apt to do) that all debts due to her citizens should be paid, and the debtor found that what he had paid was simply his own money and that the debt, the obligation, still remained and must be satisfied.

Ware v. *Hylton*, 3 Dall. 199.

Taxation laws attempted to "fix" the situs of the debt at the domicile of the debtor as against the non-resident creditor. But this Court held all such laws nugatory and ineffectual.

It is absurd to argue that the State can fix the situs of the debt at the domicile of the debtor for the benefit of one of its creditors, but cannot fix it there so as to make it contribute to its own support. For the power of taxation is an incident of sovereignty and co-extensive with it.

MARSHALL, C.J., *McCulloch* v. *Md.*, 4 Wheat. 316, 429.
Cooley on Tax. (2d ed.), pp. 4, 5.

The Rhode Island statute in question makes no attempt to fix the situs of such a debt. It simply authorizes the attachment of "the personal estate of the defendant in the hands" of the garnishee, "his personal estate in the hands," etc. (The Gen. Laws, ch. 254, sec. 10; ch. 252, sec. 17).

Nor did the Court place its decision upon that ground, but rather upon the ground that the *res* was in fact in the State of Rhode Island and within the jurisdiction of the Court. (Record, pp. 132, 135.)

(*d*) *Jurisdiction in garnishment by foreign attachment does depend upon the res being within the territorial jurisdiction of the Court.*

Jurisdiction of the garnishee does not give jurisdiction of the creditor's property in the debt in attachment proceedings any more than it did in taxation or insolvency proceedings.

Again, it has been argued that, the situs of the debt being at the domicile of the creditor and so beyond the territorial jurisdiction of the court, the jurisdiction of the court in garnishment by foreign attachment does not depend upon the situs of the debt being at the domicile of the debtor, or upon the *res* being within the territorial jurisdiction of the court, but solely upon the liability of the garnishee to suit at the place of garnishment; that is, that service on and jurisdiction of the garnishee, without personal jurisdiction of the creditor, and irrespective of the situs of the debt, gives the court jurisdiction over the debt which the garnishee owes the non-resident creditor.

National Fire Ins. Co. v. *Chambers*, 53 N.J. Eq. 468, 32 Atl. 663.
Lancashire Ins. Co. v. *Corbetts*, 165 Ill. 592, 46 N.E. 631.
Mooney v. *Buford Mfg. Co.* (C. C. A. 7th), 72 F.R. 32.
Howland v. *Chicago, etc., R. Co.*, 134 Mo. 474, 36 S. W. 29.
See also *Mason* v. *Beebee*, 44 F.R. 556, 559, SHIRAS, District Judge.
Deming v. *Orient Ins. Co.*, 78 F.R. 1, 3-4, SHIRAS, District Judge.
Reimers v. *Seatco Mfg. Co.* (C. C. A. 6th), 70 F.R. 573, 574.
Singer Mfg. Co. v. *Fleming* (Neb.), 23 L. R. A. 210, 213.

Until quite recently the courts of this country have with great unanimity attempted to sustain jurisdiction in foreign attachment upon the ground that the situs of the debt was, for the purpose of attachment, at the domicile of the debtor. But in the recent New Jersey case, *supra*, PITNEY, V.C., in a long and exhaustive opinion, showed the utter falacy of such reasoning, and maintained his position with such vigor and force that his decision has well-nigh produced a complete revolution in the decisions, and has already been followed by a number of other courts in decided cases.

After citing cases and authorities to the effect that the situs of the debt is at the domicile of the creditor (32 Atl. 668-9), he adds, "And this seems to be necessarily so upon principle." (32 Atl. 669.) "Indeed," he says, "the burden of the argument of Mr. Crandall was that the debt due from the complainant to Chambers had its situs in New Jersey, and therefore was not within the jurisdiction of the Pennsylvania Court. But the difficulty with this argument is that it goes too far, and would defeat all foreign attachments so far as relates to reaching debts due to the defendant in attachment, because they would all be held to have their situs with the non-resident defendant out of the State, and so beyond the jurisdiction of the State." (32 Atl. 669.)

He then takes the position that, while the *res* must be within the territorial jurisdiction of the Court in order to give the Court jurisdiction of a foreign attachment of tangible chattels capable of actual seizure, it is not necessary that the *res* should be within the territorial jurisdiction of the Court in order to give the Court jurisdiction of a foreign attachment of choses in action. (32 Atl. 663, 2d. par. of syllabus.)

> "It follows," he says, "that the real and only liability of a party as garnishee is by reason of his owing a debt to the defendant in the suit, and the garnishment consists in nothing more than a 'warning' to him not to pay the debt to his creditor until the plaintiff's debt is satisfied. In the process of garnishment, as thus understood, the fact that the debt subject to be garnished has its situs out of the jurisdiction has never been held to stand in the way of the process of the Court. I come, therefore, to the conclusion that the real and only ground of jurisdiction in the case of attachment of choses in action is the service, within the jurisdiction, of the warning upon the debtor (garnishee); and, when that is done, jurisdiction is obtained." (32 Atl. 669.) (See also his criticism of *Douglas* v. *Ins. Co.*, *ante*, pp. 36, 37.)

He then points out that as early as the time of Lord Holt, two hundred years ago, the garnishee was charged, although the Court

then recognized that the situs of the debt was at the domicile of the creditor and so beyond the territorial jurisdiction of the court. (32 Atl. 669-70.)

The result of that decision is perhaps best stated by the Supreme Court of Illinois, as follows:

> "To hold that the situs of the debt determines the question of jurisdiction is practically to hold that a debt cannot be garnished at all in foreign attachment, for the only ground of a foreign attachment is the non-residence of the principle defendant, who, in the case of garnishment, is the creditor of the garnishee; and if the debt which the garnishee owes to his creditor can be reached only by proceedings had where such creditor resides (that is, where the debt has its situs), it cannot be reached in foreign attachment at all. This is clearly pointed out in an exhaustive opinion by PITNEY, V.C., in *Ins. Co.* v. *Chambers*, 53 N.J. Eq. 468, 32 Atl. 663, where he shows the utter fallacy of the reasoning used to support decisions that jurisdiction in such cases depends on the situs of the debt attached or garnished."
>
> *Lancashire Ins. Co.* v. *Corbetts* (Ill.), 46 N.E. 631, 632.

In other words, these authorities establish the point for which we contend, that garnishment of a debt due to a non-resident is not a proceeding *quasi* in *rem* at all; that in such cases the *res* is at the domicile of the creditor, outside the State, and so beyond the territorial jurisdiction of the Court. Such proceedings, therefore, are clearly open to the objections sustained in *Pennoyer* v. *Neff*, in *McMillan* v. *McNeill*, *Ogden* v. *Saunders* and *Baldwin* v. *Hale*, and in *State Tax on Foreign-Held Bonds*.

If garnishment could be sustained on the ground pointed out in these decisions, it would follow that all foreign corporations doing business within the State or subject to service of process there could be held as garnishee, even though the liability was to a citizen of another State on a contract made and to be performed in such other State. The decisions in the above cases were rendered in or with reference to just such a case, the garnishees being foreign corporations and the place of garnishment being neither the domicile of the

debtor nor that of the creditor. To the effect that foreign corporations are chargeable, see—

Ill.	*Lancashire Ins. Co.* v. *Corbetts*, 165 Ill. 592, 46 N.E. 631, 36 L. R. A. 640.
Ia.	*Mooney* v. *Union Pac. R. Co.*, 60 Ia. 346, 14 N.W. 343.
Me.	*Cousens* v. *Lovejoy*, 81 Me. 467, 17 Atl. 495.
	Cf., *Lovejoy* v. *Albee*, 31 Me. 414.
Mass.	*Natl. Bank of Commerce* v. *Huntington*, 129 Mass. 444.
Mo.	*Howland* v. *Chicago, etc., R. Co.*, 134 Mo. 474, 36 S.W. 29.
N.J.	*Natl. F. Ins. Co.* v. *Chambers*, 53 N.J. Eq. 468, 32 Atl. 663.
Pa.	*Barr* v. *King*, 96 Pa. 485.
R.I.	*Moshassuck Felt Mill* v. *Blanding*, 17 R.I. 297, 21 Atl. 538.
Tenn.	*Ry. Co.* v. *Barnhill*, 91 Tenn. 395, 19 S.W. 21.
Wash.	*Neufelder* v. *German-Am. Ins. Co.*, 22 L. R. A. 287.
Fed.	*Mooney* v. *Buford, etc., Mfg. Co.* (C. C. A. 7th), 72 F.R. 32.

But there are a large number of decisions holding that foreign corporations are not so chargeable.

Ala.	*Louisville & N. R. Co.* v. *Nash*, 23 So. 825, 41 L. R. A. 331.
Colo.	*Everett* v. *Walker*, 4 Colo. App. 509, 36 Pac. 616.
Del.	*Natl. Bank* v. *Furtick*, 42 Atl. 479.
Ga.	*Wells* v. *East Tenn. V. & G. R.*, 74 Ga. 548.
Kans.	*Railway Co.* v. *Sharitt*, 43 Kans. 375.
Md.	*Myer* v. *Ins. Co.*, 40 Md. 595.
Mich.	*Milwaukee B. & I. Works* v. *Brevoort*, 73 Mich. 155, 41 N.W. 215.
Minn.	*Swedish Am. Natl. Bk.* v. *Bleecker*, 75 N.W. 740, 42 L. R. A. 283.
	Cf., *Harvey* v. *Gt. N. R. Co.*, 50 Minn. 405, 52 N.W. 905, 17 L. R. A. 84.
Miss.	*Ill. Cent. R. Co.* v. *Smith*, 70 Miss. 344, 19 L. R. A. 577.
Mont.	*Brisco* v. *Minah Consol. Min Co.*, 82 F.R. 952.
Neb.	*Am. Cent. Ins. Co.* v. *Hettler*, 37 Neb. 849, 56 N.W. 711.
	Balk v. *Harris*, 32 S.E. 799.
N.C.	*Cf.*, *Boyd* v. *Ins. Co.*, 111 N.C. 372, 16 S.E. 389.
N.H.	*Smith* v. *B. C. & M. R. Co.*, 33 N.H. 337.
N.Y.	*Douglas* v. *Phoenix Ins. Co.*, 138 N.Y. 209, 33 N.E. 938, 20 L. R. A. 118.
Tex.	*Caledonia Ins. Co.* v. *Wenar*, 34 S.W. 385.
Vt.	*Craig* v. *Gunn*, 67 Vt. 92, 30 Atl. 860.

Wis. *Morawetz* v. *Sun Ins. Office*, 96 Wis. 175, 71 N.W. 109.
Fed. *Reimers* v. *Seatco Mfg Co.* (C. C. A. 6th), 70 F.R. 573.
Cent. Tr. Co. v. *Chattanooga, R. & C. R. Co.*, 68 F.R. 685.

And if these decisions can be upheld it must be on the broad general ground for which we contend. They cannot rest on the fact that the garnishee was a non-resident or foreign corporation. There may be the same distinction that there was between *Ogden* v. *Saunders* and *McMillan* v. *McNeill*, but nothing more.

The Supreme Court of Massachusetts at an early day attempted to make jurisdiction turn on the question of the residence or non-residence of the garnishee. Thus, it laid down the law as fundamental and jurisdictional that a non-resident, although found and served within the jurisdiction, could not be held as trustee unless he had actual property of the defendant in his possession within the State, or owed him a debt there payable. (10 Mass. 343; 3 Pick. 302; 15 Pick. 445; 21 Pick. 263.) And held the same principle applicable to foreign corporations. (3 Met. 564; 1 Gray, 424; 14 Allen, 342; 106 Mass. 120.) And the courts of other States following the Massachusetts decisions laid down the same law in numerous decisions. And so the law stood for a long time. But the Legislature of Massachusetts passed a statute making non-residents and foreign corporations, having a place of business or subject to service of process within the State, liable to trustee process, the same as citizens and domestic corporations. (St. 1870, ch. 194; P.S. ch. 183, sec. 1.) And this statute, broad and unqualified as it was, the Court was compelled to uphold. (*Natl. Bank of Commerce* v. *Huntington*, 129 Mass. 444.) The New York Court of Appeals, however, rightly held that the Massachusetts courts could acquire no jurisdiction, by virtue of that statute, over the liability of a foreign corporation to a citizen of New York on a policy of insurance issued in New York on property in New York. (*Douglas* v. *Phoenix Ins. Co.*, 138 N.Y. 209, 33 N.E. 938, 20 L. R. A. 118. See also *Lovejoy* v. *Albee*, 31 Me. 414.)

It should be noticed, further, that even if garnishment could be sustained, on this ground, as against the non-resident creditor him-

self, it could not be so sustained as against insolvency proceedings at the domicile of the creditor; for these decisions expressly concede that the situs of the debt, that is, the creditor's property in the debt, is at the domicile of the creditor. And if so, it would be subject to the jurisdiction and control of the court at the domicile of the creditor and pass under the assignment in insolvency, and the courts of other States could not refuse to give full faith and credit to that assignment. That is exactly our case. For in the case at bar the question is not simply whether garnishment can be sustained in such a case as against the non-resident himself, but it is an interstate question of property rights. The conflict is between Massachusetts insolvency laws and proceedings on the one hand, and the Rhode Island attachment laws and proceedings on the other; which were entitled to full faith and credit and to prevail as against the other depended upon the situs of the property and upon that alone. If Rhode Island was entitled to assert a preference in behalf of one of her citizens in case the property was in Rhode Island, Massachusetts was entitled to assert a preference and priority in its own behalf in case the property was in Massachusetts. The concession, therefore, that the property is at the domicile of the creditor makes these decisions authorities for the plaintiffs in error and decisive of the case at bar.

And we submit, further, that garnishment cannot be sustained on the ground suggested in these decisions, even as against the non-resident creditor himself.

Garnishment as against a non-resident is a proceeding *quasi in rem*; and the thing proceeded against must be brought within the territorial jurisdiction of the court by virtual seizure thereof.

Ward v. *Boyce* (N.Y.), 36 L. R. A. 549, 551.
Douglas v. *Phoenix Ins. Co.* (N.Y.), 20 L. R. A. 118, 121.
Swedish-Am. Nat'l Bk. v. *Bleecker* (Minn.), 75 N.W. 740, 741.
Wile v. *Cohn*, 63 F.R. 759, 765.
Montrose Pickle Co. v. *Mfg. Co.*, 76 Ia. 172.
Western R. Co. v. *Thornton*, 60 Ga. 300.
Bowen v. *Pope*, 125 Ill. 28.
Plimpton v. *Bigelow*, 93 N.Y. 592.
Osgood v. *Maguire*, 61 N.Y. 524.
See also cancelled cases top P. 56 infra

"It may be urged that the garnishee is a resident of the State for the purpose of being sued therein, but garnishment is an attachment and not a suit; and the *res* in such cases is not within the jurisdiction of the court."

Brown on Juris., p. 447.
See also *Creed* v. *Gilman*, 169 Mass. 563, 48 N. E. 778.

In insolvency proceedings the Court had jurisdiction of the debtor, but this was held not to give the Court jurisdiction of the non-resident creditor or of the debt which was owed to him.

Baldwin v. *Hale*, 1 Wall. 223.
Gilman v. *Lockwood*, 4 Wall. 409, 411.
Perley v. *Mason* (N.H.), 4 Atl. 629, 630.

And the Supreme Court of Alabama say: "If a debt due to a non-resident cannot be discharged by an insolvency law or decree of the debtor's State, because of a want of jurisdiction over the creditor and the debt, a like reason should forbid its discharge by garnishment proceedings."

Louisville & N. R. Co. v. *Nash* (Ala.), 41 L. R. A. 331, 333.

In taxation proceedings the debtor was also completely subject to the dominion and control of the State, but this was held not to give the State any dominion or control over the non-resident creditor or the debt which was owing to him.

State Tax on Foreign-Held Bonds, 15 Wall. 300, 320-1, 325-6.

(e) *No solution of the problem in duality of the word debt.*

Mr. Waples, author of "Waples on Attachment and Garnishment," has written a short monograph, or polemical review of the authorities, on the law of debtor and creditor relative to the situs of debt, in an endeavor to find some ground on which garnishment might be sustained as against a non-resident principal defendant not served with process. He recognizes the fact that courts have been in conflict for many years about the place of debt, and never more so than at the present time (sec. 1); and that text writers and judges have

often expressed themselves very strongly on the difficulties of the problem and the unsettled state of the law (sec. 2). He also recognizes the fact that the various grounds on which courts have attempted to sustain garnishment in such cases are not only unsound but inconsistent, in that they treat the debt as in one place for one purpose and elsewhere for another, or as subject to be changed from one place to another by legislation, or deny the debt any situs at all, or treat its presence within the court's jurisdiction as fictitious to subserve the ends of garnishment. And he well says, that any solution of the problem, to be of practical value, must relieve from the necessity of such inconsistent treatment (sec. 3).

He suggests that the key to the solution is the duality of the word debt. Of this suggestion, however, he somewhat modestly remarks that "in view of the protracted conflict of the courts on a question frequently, and even usually, characterized as a problem of great difficulty, it seems almost presumptious to suggest that the key to its solution is the duality of the word debt" (p. 302). But he finds ground for reassurance and confidence, in quotations, which he makes as follows: "To quote the remark attributed to Czolbe: 'The profoundest riddles of the world have often remained concealed, not because of their great intricacy, but because of their exceeding simplicity.' And Shelling, more pointedly and wittily, says: 'When truth is found, it always proves somewhat like the egg of Columbus'" (p. 302).

Apart from the question of the correctness of his theory, the work will be found of assistance in an examination of the law in the case at bar, in that many of the authorities, pro and con, and especially those strongly tending to support our position, are there reviewed separately and with a fullness of statement that could not be permitted or thought of even in an ordinary brief or argument.

But with all due respect and deference, and while we agree with him in his criticism of the various grounds on which the courts have attempted to sustain garnishment, as unsound and inconsistent, we submit that the ground which he suggests is also unsound and untenable. In a word, his position is this: He attempts to extend to mere debts the distinction, applicable to lands and chat-

tels, between the title and the land or chattel itself. As in the case of lands and chattels, the title or claim is one thing and the lands or chattels themselves, or the thing claimed or owned, is another; so in the case of a debt, he contends, the right or claim, the chose in action, is one thing, and the thing claimed, the money due or withheld, is another thing. The former, the chose in action, is with the creditor; the latter, the debt property, is with the debtor.

The difficulty with this position and distinction is that it cannot be maintained. The author is so unfortunate as to be under the necessity of criticizing all of the decisions, in taxation as well as garnishment, and whether pro or con.

Perhaps the cases that afford the best illustration of his contentions are *Railroad Co.* v. *Maggard*, 6 Colo. App. 85, 39 Pac. 985, and *Everett* v. *Walker*, 4 Colo. App. 509, 36 Pac. 616. In the first case, the garnishee admitted that it owed the principal defendant $130, and actually paid that amount into court; in the second case, the insurance company had forwarded the amount due to Mrs. Walker to its agent in Colorado, where the writ of garnishment issued. But in both cases it was correctly held that the garnishment could not be maintained, the garnishee being a foreign corporation and the principal defendant a non-resident.

In criticizing these decisions, and in explanation of his own theory, Mr. Waples says: "Everett did not attach any chose in action belonging to Mrs. Walker or anybody else; he surmised that the company had money of hers which it was detaining from her; he attached in the company's hands before the debt money had become specific, it is true; but when the indebtedness had been disclosed and the garnishee charged to hold, there can be little doubt that the debt would have materialized and would have had a situs right in the registry of the court, had not the garnishee been discharged. Its place was in the garnishee's pocket, as he went away discharged. It would not have its actual place with Mrs. Walker till paid over to her" (p. 272).

Neither would it have been Mrs. Walker's money till actually paid over to her. The assumption to the contrary is the fundamental and fatal error in Mr. Waples' theory. In *Ware* v. *Hylton*, 3 Dall.

199, the debtor had paid the money to the State; but that did not discharge his obligation to the British creditor. It is obvious that money which does not become the principal defendant's property till paid over to him, is not subject to garnishment as his property before such payment.

See *Natl. Revere Bank* v. *Bay State, etc., Co.* (N.H.), 40 Atl. 255.

If the garnishee had had property belonging to the principal defendant, the attachment would have been good. The distinction has often been pointed out.

See 32 Am. L. Rev., pp. 40-1.

But in the Colorado cases the garnishee had no property or money belonging to the principal defendant. The relation between the garnishee and principal defendant was simply that of debtor and creditor; and, as the Colorado court correctly held, the money in the garnishee's hands was the garnishee's own money and did not belong to Mrs. Walker. And no legal or effective tender could have been made except to Mrs. Walker at her domicile.

Again, while the ground suggested is, in his view, sufficient to sustain garnishment of a debt due to a non-resident, he practically admits, and must concede, that it will not sustain taxation of the same debt. *We regard it as axiomatic that any rule for the support of garnishment of a debt that will not also support taxation of the same debt, is unsound and untenable. Any difficulties that forbid taxation of the debt as against the non-resident creditor will also forbid attachment of the same debt. If the debt is property for attachment in a proceeding quasi in rem, it is property for the purpose of taxation. And the power and authority of the State to interfere with the contract for its own support is surely as great as its power to do so for the benefit of one of its citizens.*

In the case of *State Tax on Foreign-Held Bonds*, 15 Wall. 300, there was this same so-called debt property in Pennsylvania. The railroad company, the debtor, was a Pennsylvania corporation; and by the Pennsylvania law the company was required, before remitting interest, to take out the amount of the taxes. Here was the debt

and the materialization of it in money for the payment of interest, and a direction to the debtor to deduct therefrom the amount of the taxes. And yet the Pennsylvania statute was held not only repugnant to the Constitution of the United States, but null and void as a law impairing the obligation of contract. And FIELD, J., delivering the opinion of the court, further said: "All the property there can be, in the nature of things, in the debts of corporations, belongs to the creditors, to whom they are payable and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. . . . It is, in fact, a forced contribution levied upon property held in other States, where it is subjected, or may be subjected, to taxation upon an estimate of its full value."

As stated by LURTON, J., in the passage hereinbefore quoted: "The actual situs is not here; and to sustain the jurisdiction we must create a fictitious or constructive situs, based upon the notion that debts are in some way property in the hands of the debtor, or, that the security for the debt being here, therefore the debt is here. By no sort of fiction can the jurisdiction of the State be held to extend to the property which a non-resident has in a debt which he holds against a resident. The creditor cannot be taxed, because he is not within the jurisdiction, and his property cannot be taxed, because it is not within the jurisdiction." (See *ante*, p. 24.)

The Supreme Court of Illinois state it correctly when they say: "Since the only property right which there can be in a debt is a mere right to receive payment of it, it is impossible that there can be anything of a tangible nature connected with such right which can occupy locality; and so the property right must accompany and remain with the person of the owner of the debt, and therefore it cannot be in this State when the domicile of the owner is in another State."

Cooper v. *Beers* (Ill.), 33 N.E. 61, 62.

In the case of a mere debt, therefore, any attempt to make out that there is property of the principal defendant's in the hands of the garnishee must fail. We regard as decisive on this point the cases

under subd. (*d*) (*supra*, pp. 41-4), and especially the cases on taxation (*supra*, pp. 18, 21-5).

(f) That the situs of the debt is at the domicile of the creditor and not that of the debtor is also established by those authorities wherein it is held that assignees in insolvency may have enjoined such so-called attachment proceedings pending in another State in violation of the insolvency laws, or may recover from the garnisher the money so collected.

The fundamental ground upon which a creditor may be enjoined from prosecuting an attachment suit is that his claim or title to the property is inferior to that of the assignee.

Reno, Non-Res., secs. 173-5, 170-2 and cases.
HOLMES, J., *Chipman* v. *Manuf. Natl. Bank*, 156 Mass. p. 148.
BIGELOW, C.J., *Dehon* v. *Foster*, 7 Allen, p. 58.
Cf., *Phillips* v. *Hunter*, 2 H. Bl. 410, 411, EYRE, C.J., dis. opin.
Green v. *Van Buskirk*, 7 Wall. 139.
Moore v. *Bonnell*, 31 N.J. L. 98-9.

It is now well settled, at least with respect to debts or credits owned by the insolvent, that an attachment suit pending in a State other than that of the insolvent assignment is not entitled to full faith and credit in the State of the assignment when the attaching creditor is also a citizen of that State. Hence the assignee may have a home creditor enjoined from prosecuting his attachment suit in such other State, and the decree enjoining him does not contravene any clause of the federal constitution.

Reno, Non-Res., sec. 171.

Even though the attachment was made before the assignment or the institution of the insolvency proceedings.

Dehon v. *Foster*, 4 Allen, 545; 7 id. 57.
Cunningham v. *Butler*, 142 Mass. 47.
Cole v. *Cunningham*, 133 U.S. 107.

Or the assignee may recover from the home creditor the amount of the debt so collected.

Sill v. *Worswick*, 1 H. Bl. 665.
Phillips v. *Hunter*, 2 H. Bl. 403, 405-6, 409.
Hunter v. *Potts*, 4 T. R. 182.
Hazen v. *Bank* (Vt.), 41 Atl. 1046.

Certain cases in which such recovery has been denied,

Thompson v. *Tetley* (N.H), 41 Atl. 179,
Lawrence v. *Batcheller*, 131 Mass. 504,
Proctor v. *Bank*, 152 Mass. 223,
Credit Co. v. *Hunter*, 3 Ch. App. 479,

although suggesting that such recovery might be barred by the judgment in garnishment, really proceed on the ground that there was no statute authorizing such recovery by the assignee in insolvency, and that a court of law will not always afford a remedy for the doing of that which a court of equity would have prevented.

See *Cole* v. *Cunningham*, 133 U.S. 33 L. ed., p. 548.

And this view is confirmed by the fact that such recovery is sustained when authorized by statute, as in attempts to evade exemption laws by garnishment in another State. See *infra*, p. 55 and cases there cited.

The rule with respect to lands and chattels is believed to be different. For while, as between citizens of the State, the Court may doubtless enforce the law of the State on the assumption and rule that all personal property follows the person of the owner, yet lands and chattels are capable of having an actual situs separate and apart from the domicile of the owner. And as the State in which lands and chattels are actually situated has jurisdiction over them, even when they belong to a non-resident, any right or title acquired by the attaching creditor under the attachment laws of that State, and which is there recognized as superior to the title of the assignee in insolvency, would seem to be valid and entitled to full faith and credit in other States, whatever the local law of the other State or the citizenship of the parties may be.

Reno, Non-Res., sec. 174 and cases.
Green v. *Van Buskirk*, 7 Wall. 139.
Melhop v. *Doane*, 31 Ia. 397.

Chipman v. *Manuf. Natl. Bank*, 156 Mass. 147.
Chipman v. *Peabody*, 159 Mass. 420.

The title so acquired is unaffected by the question of citizenship.

Green v. *Van Buskirk*, 7 Wall. 139, 151.

(g) That the situs of the debt is at the domicile of the creditor and not that of the debtor is also established by those authorities wherein it is held that the creditor may have enjoined such so-called attachment proceedings pending in another State in evasion of exemption laws, or may recover from the garnisher the amount of the debt so collected.

For it is the situs of the property that determines what statute shall govern in the matter of exemption.

Mason v. *Beebee*, 44 F.R. 556, 558.
Spindle v. *Shreve*, 111 U.S. 542, 546.

Hence where a debt is contracted in one State by whose law it is exempt from attachment, execution and garnishment, and is held by a citizen of that State, the debt is not subject to garnishment in another State in a proceeding *quasi in rem*.

Wright v. *C. B. & Q. R. Co.*, 19 Neb. 175.
C. B. & Q. R. Co. v. *Moore*, 31 Neb., p. 632.
Pierce v. *Ry. Co.*, 36 Wis. 283.
Bank v. *Ry. Co.*, 45 Wis. 172.
Drake v. *Lake Shore, etc., R. Co.*, 69 Mich. 168.
Railroad Co. v. *Dooley*, 78 Ala. 524.
Ry. Co. v. *Maltby*, 34 Kans. 125.
Ry. Co. v. *Cunningham* (Kans. App.), 51 Pac. 972.
Mason v. *Beebee*, 44 F.R. 556.
Ill. Cent. R. Co. v. *Smith* (Miss.), 19 L. R. A. 577.
Railroad Co. v. *Baker* (Ind.), 24 N.E. 83.
Caledonia Ins. Co. v. *Wenar* (Tex.), 34 S.W. 385.

Contra:

Morgan v. *Neville*, 74 Pa. St. 52.
Mooney v. *Union Pac. R. Co.*, 60 Ia. 346 and cases.
Willard v. *Sturm*, 96 Ia. 555.
Chicago R. I. & P. R. Co. v. *Sturm*, 174 U.S.
Carson v. *Ry. Co.*, 88 Tenn. 646.
Wabash R. Co. v. *Dougan*, 142 Ill. 248 and cases (changed by statute in Ill. 31 N.E. 597.)

All cases agree that where there is any statutory peculiarity pertaining to the indebtedness sought to be garnished, such as that it should not be subjected to such process, and where both the principal defendant and garnisher live in the same State, the principal defendant is entitled to an injunction to prevent the garnisher from attaching such debt in another State, notwithstanding he may there find the garnishee as a resident of such other State where the peculiarity or exemption does not obtain.

Keyser v. *Rice*, 47 Md. 203.
Snook v. *Snetzer*, 25 Oh. St. 516.
Teager v. *Landsley*, 69 Ia. 725.
Hager v. *Adams*, 70 Ia. 746.
Mumper v. *Wilson*, 72 Ia. 163.
Wilson v. *Joseph*, 107 Ind. 490.
Engel v. *Scheuerman*, 40 Ga. 206.
Zimmerman v. *Franke*, 34 Kans. 650.
Kelley v. *Siefert*, 71 Mo. App. 133.
Moton v. *Hull*, 77 Tex. 80.

Or in such case the judgment debtor may recover the amount of the debt so collected and appropriated, especially if such recovery is authorized by statute.

Steele v. *McKerrihan* (Pa.), 33 Atl. 570.
Kestler v. *Kern* (Ind.), 28 N.E. 726.
Main v. *Field* (Ind.), 40 N.E. 1103.
Teager v. *Landsley*, *ubi supra*.
Snook v. *Snetzer*, *ubi supra*.
Hager v. *Adams*, *ubi supra*.
Stark v. *Bare*, 39 Kans. 100.
Singer Mfg. Co. v. *Fleming*, (Neb.) 23 L.R.A. 210.
Bishop v. *Middleton* (Neb.), 26 L.R.A. 445.
Griggs v. *Doctor* (Wis.), 30 L.R.A. 360.

Or may recover of the garnishee, notwithstanding the judgment in garnishment and payment of the same by the garnishee.

Louisville & N. R. Co. v. *Nash* (Ala.), 41 L.R.A. 331.
Bucy v. *Kans. City, M. & B. R. Co.* (Miss.), 22 So. 296.
Mo. Pac. R. Co. v. *Sharitt*, 43 Kans. 375.
Chicago R. I. & P. Ry. Co. v. *Sturm* (Kans. App.), 49 Pac. 337.

Contra:

~~*Nat. Tr. Co.* v. *Chattanooga R. & C. R. Co.*, 68 F.R. 685, 688-8.~~

~~*Nat'l. Bank* v. *Fartick* (Del.), 42 Atl. 479, 481.~~

C. B. & Q. R. Co. v. *Moore*, 31 Neb. 629.

O'Connor v. *Walter* (Neb.), 23 L. R. A. 650.

Eddy v. *O'Hara*, 132 Mass. p. 62.

Connor v. *Hanover Ins. Co.*, 28 F.R. 549.

Hunter v. *Potts*, 4 T.R. 182.

Phillips v. *Hunter*, 2 H. Bl. 403.

Va., etc., Ins. Co. v. *N. Y., etc., Mfg. Co.* (Va.), 40 L. R. A. 237.

Chicago R. I. & P. Ry. Co. v. *Sturm*, 174 U.S.

~~32 Am. L. Rev., pp. 44 *et seq.* and cases.~~

If the debt had been property at the domicile of the debtor or place of the so-called attachment, the requirement of full faith and credit would have prevented such recovery. (*Green* v. *Van Buskirk*, 7 Wall. 139, 151; see also Waples, Debtor & Creditor (Situs of Debt) sec. 275). But neither the so-called attachment proceedings nor the judgment against the garnishee therein were entitled to full faith and credit; because the court was without jurisdiction, either *in personam* or *in rem*, and was simply reaching over and attempting to affect property in another state. This is very clearly and emphatically pointed out by the Supreme Court of Nebraska. The Court says:

> "If the courts of Iowa should seek to prosecute a citizen of Nebraska who does not come within their jurisdiction, and to reach over into Nebraska, and take from this State the property of that citizen here located, can any one for a moment urge, or seriously consider, that our legislature and courts, in order to give full faith and credit to the judicial proceedings of Iowa, must stand idly by and countenance such a proceeding? Must we permit our laws to be nullified and evaded, in order to sustain the courts of another State in overreaching their jurisdiction, in refusing to exercise a comity elsewhere accorded sister States, and in seizing the property in Nebraska of citizens of Nebraska who have not brought themselves within the lawful reach of the Iowa courts? . . . That is precisely the position of the defendant in error here. His property which was seized was in Nebraska, and subject to the jurisdiction of our courts, and not those of Iowa." (23 L.R.A. 213.)

Again the court say:

> "The tort consisted in seizing property in Nebraska, exempt under the laws of Nebraska. The plaintiff in error was enabled to do this by instituting proceedings in another State. But the tort consisted not in instituting those proceedings in Iowa. A suit might rightfully be begun there *in personam* had Fleming brought himself within the jurisdiction of the Iowa courts. No action would have arisen had the property attached been situated in Iowa, or in a State other than Nebraska; but the wrong was in seizing a debt situated in Nebraska, payable in Nebraska, to a citizen of Nebraska." (23 L. R. A. 214.)

(h) That the situs of the debt is at the domicile of the creditor and not that of the debtor is conceded, if not established, by those cases which have attempted to lay down the law which should govern where the debtor has been garnished in one State and sued by the creditor himself in another State.

For these cases concede that there is no property at the domicile of the debtor which can be made the subject of a proceeding *quasi in rem*, to which the courts of other States are bound to give full faith and credit; on the contrary, they treat both as mere suits and assert that the effect to be given to either as against the other depends entirely upon the mere question of priority of suit.

This was another point on which the decisions were remarkably uniform at first, owing no doubt to the prestige of the courts by which the law was first declared. And while both proceedings were correctly enough, put on a par as nothing more than mere suits it has since been demonstrated that the principle on which the cases were decided is entirely inapplicable, and as applied to mere suits clearly erroneous.

The cases may be conveniently considered under two divisions:

First, suits by the creditor against his debtor in which the court having jurisdiction of the same yielded to a prior garnishment in respect of the same debt in the courts of another State, of which the first and leading cases in this country is—

Embree v. *Hanna*, 5 Johns. 101 (1809), KENT, C.J.

The defendant Hanna, a resident of Baltimore, Md., was indebted

to Embree on book account for $250.38. One of Embree's creditor's attached the debt in Hanna's hands in Maryland, pursuant to the laws of that State, which permitted a non-resident creditor to attach the goods and "credits" of a non-resident debtor. Subsequently the defendant was sued and arrested in New York for the same debt. The defendant pleaded the attachment proceedings, and it was agreed that if this was a good plea, either in abatement or bar, the plaintiff was to be nonsuited, otherwise judgment was to be entered on the verdict. It was held that such a plea in abatement was good.

The principle of the holding is clearly erroneous.

The case was "decided in 1809, upon the authority of English cases which referred to domestic actions, and upon the ground that a garnishee could not otherwise be protected," and held "that a plea in abatement was good." "The decision was made before the law in this country had been settled that the courts of the States are to be considered as foreign to each other, and the courts of the United States as foreign to those of the States in this matter."

> LOWELL, J., *Lynch* v. *Hartford F. Ins. Co.*, 17 F.R. 627, 628.
> See also *Dwight* v. *Cent. Vt. R. Co.*, 9 F.R. 785, 789.
> *Willson* v. *Milliken* (Ky.), 42 L. R. A. 449 and cases.

And it has since been settled that the pendency of a suit in one jurisdiction is no defence, and cannot be pleaded in abatement to the pendency of a suit in another jurisdiction, even though between the same parties and for the same subject matter.

> *Stanton* v. *Embrey*, 93 U.S. 548.
> *Gordon* v. *Gilfoil*, 99 U.S. 168.

And that in such suits where both courts had jurisdiction, a judgment in one is necessarily conclusive in the other, and is a perfect protection, irrespective of the question of priority.

> *White* v. *Burger* (Me.), 4 Atl. 694 and cases.
> *Capwell* v. *Sipe*, 51 F.R. 667.
> *Paine* v. *Ins. Co.*, 11 R.I. 411, 413.
> *Ins. Co.* v. *Harris*, 97 U.S. 331.

Green v. *Sarmiento*, Fed. Cas. No. 5,760.
Stout v. *Lye*, 103 U.S. 66.

The reason of the holding is also clearly erroneous.

The reason of the holding was that such a rule is necessary to protect the garnishee from compulsory double payment.

Hence, it has been held, "the reason of that decision does not apply" where "there is no danger of a compulsory double payment."

EARL, J., *Williams* v. *Ingersoll*, 89 N.Y. 508, 524.

The Court, in *Embree* v. *Hanna*, necessarily looked for authorities to the English decisions. Those decisions recognized the validity of a discharge under the custom of London and similar laws. It is to be remembered, however, that the custom of London had been confirmed by Parliament, so that on principle a discharge in pursuance thereof was as good in other parts of England as in London itself; and in upholding the validity of such a discharge as against non-residents or foreigners, the English courts were but applying a doctrine which they had always recognized, nay, even asserted, viz., the right and power of any court or nation to discharge contracts with non-residents, provided only the contracts were made or to be performed at the place of discharge (see also per Lord CAMPBELL, C.J., *De Haber* v. *Queen of Portugal*, 17 Q.B. 191, 213; *Mayor, etc., London Cox*, L.R. 2 H. L. Cas. 239),—a doctrine which, although for a time recognized and asserted by some of the legislatures and courts of this country, has since been entirely repudiated and condemned as untenable, especially as between the States.

But while the English decisions thus recognized the validity of such a discharge, they afforded no way of protection to the garnishee, other than by a plea of payment under the custom. There was a mere dictum of Lord HOLT, in *Brook* v. *Smith*, 1 Salk. 280, to the effect that garnishment was pleadable in abatement; but there was no decision to that effect and the later decisions were directly to the contrary. (*Smith* v. *Ogle*, 6 Taunt. 74; *Nathans* v. *Giles*, 5 Id. 558; *Cf. Magrath* v. *Hardy*, 4 Bing. n. c. 782; *Wetter* v. *Rucker*, 1 B. & B. 491; *Crosby* v. *Hetherington*, 4 M. & Gr. 933.) On the English decisions, therefore, the Court was forced to put its decision

upon the ground that such a rule was necessary for the protection of the garnishee.

The Court entirely overlooked the numerous provisions of the Constitution of the United States and Laws of Congress for the protection of the rights of citizens of one State as against the encroachments of other States in behalf of their own citizens, which provisions were amply sufficient for the protection of the rights both of the garnishee and of the non-resident creditor. This is perhaps not surprising, for it is doubtless true that the extent and efficacy of those provisions were little, if at all, appreciated or understood at that time. *Embree* v. *Hanna* was decided in 1809, nearly twenty years before the Supreme Court of the United States in *Ogden* v. *Saunders* astonished the various State courts and legislatures with the declaration of law that one State could not, by its insolvency laws, discharge a debt due to a citizen of another State, even though the contract was made within the State after the passage of the law; more than fifty years before all question of that law was put to rest in *Baldwin* v. *Hale*; more than sixty years before it was established by this Court that a State could not tax a debt due to a citizen of another State, because not property at the domicile of the debtor; more than sixty years also before it was established by this Court that a State could not deprive even a foreign corporation of its rights to resort to the federal courts; nearly seventy years before this Court, in *Pennoyer* v. *Neff*, again surprised certain State courts and legislatures with the declaration of law that a judgment against a non-resident rendered without jurisdiction of the person or property, even though property was within the territorial jurisdiction of the court, was a mere nullity and not entitled to full faith and credit; and more than ninety years before this Court, in *Blake* v. *McClung*, 172 U.S. 239, declared null and void State legislation attempting to give its own citizens a preference over non-resident creditors in the distribution of the assets of an insolvent foreign corporation. (See also *Belfast Savings Bank* v. *Stowe* (C.C.A. 1st), 92 F.R. 100. *Maynard* v. *Granite State Prov. Ass'n* (C.C.A. 6th), 92 F. R. 435. *Cf.*, *Jones* v. *Sands* (C.C.A. 2d), 79 F.R. 913, 914.) History shows that the States and State courts have been slow to

appreciate and understand the extent and efficacy of those provisions. In *Embree* v. *Hanna*, the court did not even notice that there were any such provisions.

It is sufficient to say that if the "credits," the attachment of which was authorized by the law of Maryland, were property in Maryland, the New York courts were bound to give full faith and credit to those attachment proceedings and could not compel the debtor to pay twice as if no such proceedings were pending, and that, too, irrespective of the question whether the attachment proceedings were prior or subsequent. (*Green* v. *Van Buskirk*, 7 Wall. 139.) On the other hand, if those "credits" were not property in Maryland, the Maryland Court had no jurisdiction and the attachment proceedings were therefore null and void (*Pennoyer* v. *Neff*, 95 U.S. 714), and not entitled to full faith and credit (*Thompson* v. *Whitman*, 18 Wall. 457; *Cole* v. *Cunningham*, 133 U.S. 107; *Simmons* v. *Saul*. 138 U.S. 439, 448; *Hekking* v. *Pfaff* (C. C. A. 1st), 91 F.R. 60, 61-2); and hence the Maryland Court would be bound to give full faith and credit to the New York proceedings, and, especially after the debt was merged in judgment, could not charge the garnishee as if no such proceedings were pending. (See authorities, *infra*, p. 72-3.) It could not then charge the garnishee on the original debt, because that would be merged in the judgment (Id.). And it could not charge the garnishee on the judgment, as a judgment is not subject to garnishment by process from any other court than that in which the judgment was rendered. (*Hamill* v. *Peck* (Colo.), 52 Pac. 216; *Scott* v. *Rohman* (Neb.), 62 N.W. 46; *Tourville* v. *Wabash R. Co.* (Mo.), 50 S.W. 300; *Renier* v. *Hurlburt*, 81 Wis. 24; *Harvey* v. *Min. Co.*, 15 F.R. 649; *Thomas* v. *Wooldridge*, Fed. Cas. No. 13,918.)

It is a mistake to assume or suppose that the garnishee is without protection under the Constitution and laws of the United States. If the court in garnishment has no jurisdiction as against the non-resident creditor, then any payment by the garnishee would be a payment of his own money and not of the money or property belonging to the principal defendant. A judgment compelling this cannot be called due process of law. "If the law was valid, the

usual and ordinary process was adopted. If it was not valid, the defendant was deprived of his property without due process of law." (*Holden* v. *Hardy* (Utah), 37 L. R. A. 103, 105.) As the Supreme Court of Delaware say: "The contention that the garnishee cannot thus attack the judgment is not supported by any well considered case. In a suit by attachment the Court must acquire jurisdiction and proceed to enter a judgment before it can pronounce any judgment against the party summoned as garnishee. If the previous proceedings are unauthorized and void, there is no sufficient basis to support a judgment against the garnishee." (*Natl. Bank* v. *Furtick* (Del.), 42 Atl. 479, 485). Under sec. 2, art. 4, of the Constitution, the garnishee is entitled to all privileges and immunities of citizens of the several States, which forbids that the courts of his own State even should so deal with the debt which he owes to a non-resident, that he must either remain at home or subject himself to compulsory double payment. And under sec. 1 of the 14th Amendment, the garnishee is made a citizen of the United States as well as of the State where he resides; and the State is forbidden (1) to *make* or *enforce* any law which shall abridge the privileges or immunities of citizens of the United States; (2) to deprive any person of life, liberty or property without due process of law; or (3) to deny to any person within its jurisdiction the equal protection of the law. "The 14th Amendment, which was finally adopted July 28, 1868, largely expanded the power of the federal courts and Congress, and for the first time authorized the former to declare invalid all laws and judicial decisions of the States abridging the rights of citizens or denying them the benefit of due process of law." (*Holden* v. *Hardy*, 169 U.S, 366, 382.) "While . . . the primary object of this amendment was to secure to the colored race, then recently emancipated, the full enjoyment of their freedom . . . a majority of the cases which have since arisen have turned, not upon a denial to the colored race of the rights therein secured to them, but upon alleged discriminations in matters entirely outside of the political relation of the parties aggrieved." (169 U.S. 382-3.)

The rights of both parties, therefore, were amply protected, and the reason for the holding does not in fact exist.

Second, suits by the creditor against his debtor in which the Court having jurisdiction of the same refused to yield to a subsequent garnishment and so-called attachment of the debt in the courts of another State or jurisdiction, of which the first and leading case is —

Wallace v. *McConnell*, 13 Pet. 136 (1839).
See also *Whipple* v. *Robbins*, 97 Mass. 107.
Am. Bank v. *Rollins*, 99 Mass. 313.

In the first two of the above cases the so-called attachment of the debt at the domicile of the debtor, but without personal jurisdiction of the non-resident creditor, nay even payment under such an alleged attachment, was held to constitute no defence on behalf of the garnishee to the prior suit which the creditor himself had brought against his debtor for the recovery of the same debt, in the Federal Court in the same State in one case, and in the court of another State at the domicile of the creditor in the other case. In the third, a so-called attachment of the debt in Massachusetts, at the domicile of the debtor, but without personal jurisdiction of the non-resident creditor, was made to yield to the prior suit which the creditor had himself brought against his debtor for the same debt in Maine, the domicile of the creditor.

On the facts those cases were correctly decided. They indirectly, if not directly, establish the principle for which we contend, viz., that the debt is not property at the domicile of the debtor, and therefore cannot be made the subject of a proceeding *quasi in rem* which would be entitled to full faith and credit in the courts of another State.

For if the creditor's property in the debt had been at the domicile of the debtor, the attachment would have been valid, and the courts of other States would have been bound to give full faith and credit to it, even though subsequent.

Green v. *Van Buskirk*, 7 Wall. 139.

The courts of the several States, when the property was actually within the State and the attachment proceedings were on behalf of

a domestic creditor, have uniformly refused to recognize an attempted involuntary assignment of the property by the courts of other States, though the attachment proceedings were instituted subsequent to and with full notice of the involuntary transfer. See Record, pp. 139-40 and cases there cited.

And it is only when the property was within the jurisdiction of the Court making the involuntary transfer that the courts of other States are bound to give full faith and credit to such transfer, and are thereby debarred of subsequent action.

Crapo v. *Kelly*, 16 Wall. 610.
Green v. *Van Buskirk*, 7 Wall. 139.
R'v'g *Van Buskirk* v. *Green*, 13 Abb. 145, 2 Keyes, 119.

In *Wallace* v. *McConnell*, it is true, the Court, quoting for the most part the language of KENT, C.J., in *Embree* v. *Hanna*, speak of the garnishment as creating a "lien upon the debt," "which the courts of all other governments, *if they recognize such proceedings at all*, cannot fail to regard." But those statements are mere *dicta*. And it is obvious that the validity and effect of an attachment of property in one State does not depend upon whether other States "recognize such proceedings." Under the Federal Constitution other States are obliged to give full faith and credit to them, provided only the Court in the attachment had jurisdiction of the property.

Green v. *Van Buskirk*, *ubi supra*.

It is worthy of note that the Supreme Court of the State whose attachment proceedings were refused recognition in *Wallace* v. *McConnell*, has since wholly repudiated such so-called attachments, and now refuses to "recognize such proceedings at all."

Louisville & N. R. Co. v. *Nash* (Ala.), 41 L. R. A. 331, 23 So. 825.

The rule suggested in the above cases is that the proceeding first begun is entitled to prevail, that it is wholly a question of priority of suit. And this rule also clearly recognizes the soundness of the proposition for which we contend, for it puts the garnishment and

suit upon the same level as mere suits, and correctly so, for that in case of a mere debt or pecuniary obligation there is any property that can be made the subject of a proceeding *quasi in rem* without personal jurisdiction of the non-resident creditor, is absurd. They are both suits, one by the creditor for his own benefit, and the other by the creditor for the benefit of the garnisher. Hence the conflict. The garnishment order does not transfer the debt, or make the garnisher a creditor of the garnishee.

No. Chicago R. Mill Co. v. *St. Louis, Ore. & S. Co.*, 152 U.S. 618 and cases.

Even if the rule laid down in these cases were applicable and controlling in the case at bar, the plaintiffs in error would be entitled to prevail because the insolvency proceedings were commenced first, —the insolvency proceedings on the 12th and the alleged attachment proceedings on the 13th of August, 1889.

Under the rule it is the commencement of the suit or proceeding that is made the decisive and controlling fact.

> "The doctrine in question is not limited in its application to cases where property has actually been seized under judicial process before the second suit is instituted in another court, but it applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in all other suits of a similar nature, where, in the progress of the litigation, the court may be compelled to assume possession and control of specific, personal or real property."

Merritt v. *Am. Steel Barge Co.* (C. C. A. 8th), 79 F.R. 228, 231.

But the defendant in error may urge that, under the laws of Massachusetts, August 23 was the date of the commencement of the insolvency proceedings, as this was the date of the first publication of the notice of issuing the warrant, and section 46 provides that "the assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution by a judg-

ment against him *at the time of the first publication* of the notice of issuing the warrant." But it is clear that this marks, not the commencement of the proceedings, but the division between the ownership of the assignee in reference to the past, and the ownership of the insolvent in respect to the future acquisitions of the insolvent. It would be just as reasonable to point to another provision in the same section, which provides that the assignment "shall be effectual . . . to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid," and say that the commencement of the proceedings was four months before the date of the first publication. The fact is, that the assignment is effectual as against an attachment made not more than four months prior to the date of the first publication of the notice of issuing the warrant, and passes all property acquired by the debtor up to the date of the first publication, but the commencement of the proceedings is the filing of the petition. Under the recent United States Bankruptcy Act, the title of the trustee relates back only to the date of the adjudication (sec. 70), but that does not make the adjudication the commencement of the proceedings. On the contrary, the commencement of the proceedings is, and is expressly declared to be, the date when the petition was filed (sec. 1 (10)). It is obvious that proceedings must be commenced before the court can "adjudicate"; and one obvious difference between a voluntary and an adverse applicatoin is, that in the former the debtor submits himself and his property in the outset to the jurisdiction of the court as an insolvent under the law.

Whitehead v. *Mallery*, 4 Gray, 180, 183.
Mass. Pub. Sts., ch. 157, sec. 16 *et seq.*

But the principle is not applicable, because in garnishment by foreign attachment of debts due to non-residents no fund or property passes into the jurisdiction of the court from which garnishment process issues the possession of which could be disturbed by proceedings in another court; and all the court in garnishment can do is to render a personal judgment against the garnishee for the sum due.

SHIRAS, Dist. J., *Deming* v. *Orient Ins. Co.*, 78 F.R. 1, 3-5 and cases.
Lancashire Ins. Co. v. *Corbetts* (Ill.), 46 N.E. 631, 632, 635.
Natl. F. Ins. Co. v. *Chambers* (N.J. Eq.), 32 Atl. 663.

And what is more directly in point and decisive of the case at bar the rule does not apply, because the court acquired no jurisdiction, *in rem* or *in personam*, by the so-called attachment proceedings.

Louisville & N. R. Co. v. *Nash* (Ala.), 41 L. R. A. 331.
Douglas v. *Phoenix Ins. Co.*, 138 N.Y. 209, 20 L. R. A. 118.
Natl. Bank v. *Furtick* (Del.), 42 Atl. 479, 482, 484.
Dowling v. *Corbetts* (Wis.), cited in
Lancashire Ins. Co. v. *Corbetts* (Ill.), 46 N.E. 631, 635.
Caledonia Ins. Co. v. *Wenar* (Tex. App.), 34 S. W. 385.
Continental Ins. Co. v. *Chase* (Tex. App.), 33-602.
See also cases *infra*, pp. 68, 69.

If the court acquired no jurisdiction by the so-called attachment proceeding, there is no law or power that requires, or can require, the courts of other States to give full faith and credit to such proceedings, whether prior or subsequent.

Thompson v. *Whitman*, 18 Wall. 457.
Cole v. *Cunningham*, 133 U.S. 107.
Simmons v. *Saul*, 133 U.S. 439, 448.
Hekking v. *Pfaff* (C. C. A. 1st), 91 F.R. 60, 61-2.

It is not surprising, therefore, that the rule, instead of protecting the garnishee from compulsory double payment, has resulted, in numerous instances, in inflicting a double liability upon the garnishee. Chief Justice KENT sustained the rule by denying his own undoubted jurisdiction and recognizing the asserted jurisdiction of a court that was without jurisdiction. In *Wallace* v. *McConnell* and *Whipple* v. *Robbins*, the Court sustained its own jurisdiction, and, indirectly, the rule, but at the expense of inflicting a double liability upon the garnishee. Massachusetts has several times been obliged to complain at the non-observance of the rule by other courts,—in several cases contenting itself with the assumption that the action of the other court would have been different if the trustee had made a full dis-

closure, and in other cases being obliged to discharge the trustee, notwithstanding the priority of its own so-called attachment proceedings. And, in numerous cases, courts have refused to adopt the rule, for the reason that the court acquired no jurisdiction of the debt by the so-called attachment.

Douglas v. *Phoenix Ins. Co.*, 138 N.Y. 209.
Alley v. *Douglas* (Mass.), not reported.

Osgood v. *Maguire*, 61 N.Y. 524 (1875).
Folger v. *Ins. Co.*, 99 Mass. 267 (1868).
Taylor v. *Ins. Co.*, 14 Allen, 353 (1867).

McCarty v. *City of New Bedford*, 4 F.R. 818, 819, 831-2.
Eddy v. *O'Hara*, 132 Mass. 56, 57, 61.

Hull v. *Blake*, 13 Mass. 153 (Nov. 19, 1811).
Fisk v. *Billings*, *Blake Tr.* (Ga.), not reported (Nov. 21, 1811).

Ward v. *Boyce*, 152 N.Y. 191.
Herrick v. *Ward*, *Boyce Tr.* (Vt.), not reported.

Martin v. *Cent. Vt. R. Co.*, 20 N.Y. St. R. 375.
Kelly v. *Martin*, *Cent. Vt. R. Co. Tr.* (Vt.), not reported.

Dowling v. *Corbetts* (Wis.), cited in. —
Lancashire Ins. Co. v. *Corbetts* (Ill.), 46 N.E. 631, 635.

Am. Cent. Ins. Co. v. *Hettler*, 37 Neb. 849.
Am. Cent. Ins. Co. v. *Hettler*, 46 Ill. App. 416, 417.

Mo. Pac. R. Co. v. *Sharitt*, 43 Kans. 375.
Stewart v. *Sharitt*, *Mo. Pac. R. Co. Tr.* (Mo.), not reported.

Chicago, R. I. & P. R. Co. v. *Sturm*, 5 Kans. App. 427.
Willard v. *Sturm*, *C. R. I. & P. R. Co.*, 96 Ia. 555.

Ill. Cent. R. Co. v. *Smith*, (Miss.), 19 L. R. A. 577, 580, n.
v. *Smith*, *Ill. Cent. R. Co. Tr.* (Ia.), not reported.

Bucy v. *Kansas, etc., R. Co.* (Miss.), 22 So. 296.
v. *Bucy, Kans., etc., R. Co. Tr.* (Tenn.), not reported.

Louisville & N. R. Co. v. *Nash* (Ala.), 41 L. R. A. 331.
v. *Nash, L. & N. R. Co. Tr.* (Tenn.) not reported.

Ala. G. S. R. Co. v. *Chumley*, 92 Ala. 317.
v. *Chumley, Ala. G. S. R. Co. Tr.* (Tenn.)

And other cases.

The editor of a leading set of current annotated reports in a note to one of the above cases, says:

> "It is stated in a letter to us from one of the attorneys for the garnishee in the main case that the Mississippi proceedings were held in Iowa to be no bar to the prosecution of the garnishment in that State, and that, in consequence, the garnishee was compelled to pay twice. If this is a fact, it fitly illustrates the chaotic condition of the law on this subject, and the possibility of such a result is clearly contemplated by the Mississippi Court. The true doctrine seems to us to be that no jurisdiction can be obtained to condemn a debt due to a non-resident unless jurisdiction of his person is obtained. . . . Such a proceeding seems unworthy to be called due process of law." (19 L. R. A. 579-80, note.)

As we have already stated, it is absurd that the rights of a garnishee, a mere stakeholder, can be thus made to depend in all cases upon a rule, the adoption and observance of which, even when there are no real or supposed grounds for disregarding it, is voluntary and in the discretion of the Court. The only way to afford absolute protection to the garnishee is by declaring all such so-called attachment proceedings without jurisdiction of the non-resident or of his property, and all statutes authorizing the same to be repugnant to the Constitution and laws of the United States, and null and void. Thus construed, the Federal Constitution protects the garnishee and his property and the non-resident creditor and his property without adding to or detracting from the rightful jurisdiction or power of either State.

III.

Debt Transferred in Massachusetts and Merged in the Massachusetts Judgment, which was Entitled to Full Faith and Credit.

Not only was the situs of the debt in Massachusetts, but the assignment and transfer of it by the Massachusetts Court of Insolvency to the assignees and by the assignees to King was made and completed in Massachusetts; the transfer, being of a mere chose in action, took effect immediately, and was perfected and completed by the mere assignment and transfer, no delivery of possession being necessary or possible.

Story, Confl. of Laws (7th ed.), sec. 396 and cases.
See also *Conrad* v. *Ins. Co.*, 1 Pet. 449.
Crapo v. *Kelley*, 16 Wall. 641, 21 L. ed. p. 441.

No notice to the debtor was required either by the law of Massachusetts or by the law of Rhode Island.

Frank v. *Babbitt*, 155 Mass. p. 116 and cases.
Noble v. *Smith*, 6 R.I. 446.
Abbott v. *Davidson* (R.I.), 25 Atl. 839, 840 and cases.
Story, Confl. of Laws, *ubi supra*.

Under the laws of Massachusetts, where the contract was both made and to be performed, it was in effect negotiable and subject, on a certain contingency (which in fact happened), to be assigned by operation of law to the assignees of Brown, Steese & Clark, and by those assignees to some purchaser for value, to whom the Lippitt Woolen Company should be alone accountable and indebted on account thereof, and that the purchaser might bring suit thereon in his own name and right.

Mass. Pub. Sts., ch. 157, secs. 44, 46, 51, 109.

The validity, nature, obligation and construction of the contract itself, as well as the validity and effect of the assignment and transfer of the same, were and are to be determined by the laws of Massachusetts, where the contract was both made and to be performed, and where the assignment and transfer thereof was effected.

"Some doctrines are so well settled that it would be a mere waste of time to attempt to defend them. It is, for instance, a principle of public law perfectly beyond the reach of judicial controversy that personal contracts are to have the same validity, interpretation and obligatory force in every other country which they have in the country where they are made or are to to be executed."

STORY, J., *LeRoy* v. *Crowningshield*, 2 Mason, p. 157. See also *Buchanan* v. *Bank*, 55 F.R. 223, 228.

And the rights of the parties to the contract were and are so to be determined under and with reference to the laws of Massachusetts, even in a Rhode Island court, and notwithstanding the fact of garnishment and although the effect of such construction be to show that the debt was not subject to garnishment.

Mason v. *Beebee*, 44 F.R. 556, SHIRAS, D.J.

"The query is, what is to be deemed to be the situs, with regard to the exemption laws of Illinois, of a debt due for wages earned in Illinois by a resident of that State? Why not to such a case apply the general rule that a chose in action has its situs at the domicile of the owner thereof? True, it may be said that this is a fiction of the law which will in many instances be disregarded. Is it, however, any more of a fiction than to hold that the situs of the debt is where the debtor may be found? Fiction or not, it is the primary and general rule, and will govern unless good reason exists for adopting some other guide. . . .

"In passing upon the claim of the intervenor, would not the Court ascertain the fact of the transfer, and, finding that it had been made in Illinois, where both the defendant and the intervenor live, would not the Court apply the law of Illinois in determining whether a legal and valid transfer of the debt had been made, and would it be barred from viewing the transfer in the light of the Illinois law simply because the suit in Iowa had been brought by attachment and garnishment?" (44 F.R. 560, 563.)

"The cases above cited of *Thurman* v. *Stockwell*, *Speed* v. *May*, and *Caskie* v. *Webster*, are, I think, sound law. A chose in action cannot surely be said to have any situs in the place

where the debtor resides; as a general principle, it is payable at the residence of the creditor if not expressed otherwise, and a tender to be good must be made to the creditor. There would seem therefore to be no sound basis for the debtor's State to legislate exclusively as to the legality of a transfer of that debt made by a foreign creditor. In such case, as in all others, where the property transferred does not actually lie within the jurisdiction of another government, a sale or a contract valid where made is valid everywhere."

PECKHAM, J., *Guillander* v. *Howell*, 35 N.Y. 657, 662.

Whether the obligation of the Lippitt Woolen Company was so far negotiable that King could have sued on it in his own name in Rhode Island is immaterial, for it was in effect negotiable, and King could sue on it in his own name in Massachusetts, and having recovered judgment on it in Massachusetts, he is now entitled to sue on that judgment even in Rhode Island.

Talmadge v. *Chapel*, 16 Mass. 71.
Biddle v. *Wilkins*, 1 Pet. 686.
Huntington v. *Attrill*, 146 U.S. 657.
Renaud v. *Abbott*, 116 U.S. 277, 285-9.

The original obligation of the Lippitt Woolen Company was merged in and extinguished by that judgment.

Green v. *Sarmiento*, Fed. Cas. No. 1, 117.
Schuler v. *Israel*, 120 U.S. 506.
Ins. Co. v. *Harris*, 97 U.S. 331.
Whiting v. *Burger*, 78 Me. 287 and cases.
Paine v. *Ins. Co.*, 11 R.I. 411, 413.
Wyman v. *Fabens*, 111 Mass. 77, 80.
Bradford v. *Rice*, 102 Mass. 472.
Sampson v. *Clark*, 2 Cush. 173, 174.
Wolcott v. *Hodges*, 15 Gray, 547.
Ward v. *Johnson*, 13 Mass. 148, 150.
Handrahan v. *Ins. Co.*, 4 Allen, 396.
Husey v. *Crawford*, 152 Mass. 596, 598.

And the Court could not disallow the claim of the adverse claimant or charge the Lippitt Woolen Company, as trustee herein, as if

its obligation had not been merged in and extinguished by that judgment without necessarily denying full faith and credit to the orders, judgments and decrees of the Massachusetts courts, especially the judgment of the Superior Court.

Green v. *Van Buskirk*, 5 Wall. 310; 7 Wall. 139.
Christmas v. *Russell*, 5 Wall. 290.
Crapo v. *Kelley*, 16 Wall. 610, 618-21.
Huntington v. *Attrill*, 146 U.S. pp. 685-6 and cases.

Respectfully submitted,

JOHN C. COÖMBS,
CHAS. H. HANSON,
ROBERT W. BURBANK,
for Plaintiffs in Error.

No. 28.

Brief of Tillinghast for D. & E.

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~~OCTOBER TERM, 1899, No. 189.~~

28.

THEOPHILUS KING AND THE LIPPITT WOOLEN COMPANY,

PLAINTIFFS IN ERROR,

VS.

JOHN A. CROSS, ET. ALS.,

DEFENDANTS IN ERROR.

BRIEF FOR JOHN A. CROSS, DEFENDANT IN ERROR.

JAMES TILLINGHAST,
WM. R. TILLINGHAST,
Defendant's Attorneys.

PROVIDENCE:
F. H. TOWNSEND, LAW PRINTER,
95 PINE STREET,
1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

THEOPHILUS KING,

AND

THE LIPPITT WOOLEN COMPANY,
Plaintiffs in Error.

vs.

JOHN A. CROSS, ET ALS.,
Defendants in Error.

No. 28.

Our brief in this case was prepared for the last term before Chicago, Rock Island & Pacific R. R. Company vs. Sturm, 174 U. S., 710, was decided.

But, while that case, as we understand it, covers and concludes all questions raised by the plaintiffs in error here, we deem it better to file the brief as it is.

JAMES TILLINGHAST,
WM. R. TILLINGHAST,
Attorneys for Defendant John A. Cross.

Supreme Court of the United States.

OCTOBER TERM, 1898.

THEOPHILUS KING

AND

THE LIPPITT WOOLEN COMPANY,
Plaintiffs in Error,

vs.

JOHN A. CROSS, ET ALS.,
Defendants in Error.

No. 186.

BRIEF FOR THE DEFENDANT IN ERROR, JOHN A. CROSS.

I.

Several preliminary questions arise upon this record which it is submitted dispose of the case.

The record discloses, (foot of page 153), as follows: "And now, "at this said present session of this said Common Pleas Division, said "petitions for a new trial are all dismissed by said Appellate Division, "and said case remitted to this said Common Pleas Division *for further* "*proceedings*, and *by agreement* judgment is entered by the court, Doug- "las J. to wit, upon the 14th day of December A. D. 1895, upon said "verdict for said plaintiff for the sum of $55,822.06 debt, and his costs

"of suit, taxed at $189.70, of which said sums said Lippitt Woolen "Company garnishee is charged as trustee of the said defendants to "the extent of $16,421.26, and all other trustees are not charged."

(*a.*) From such a judgment a writ of error will not lie; error does not lie from a judgment *by consent* :

United States v. Babbitt, 104 U. S. 767.
Pacific R. R. v. Ketchum, 101 U. S. 289.
Erlanger v. Southern Pac. R. R. Co., 109 Cal. 395.
Hendrick v. Minor Lumber Co., 71 N. W. Rep. 483, (Mich).
Bolles v. Cantor, 6 App. Div. (N. Y.) 365.

(*b.*) The judgment of the Appellate Division was not final:

1. It remitted the case to the Common Pleas Division, "*for further proceedings.*"

Error does not lie from such an order :

Wagner v. Charleston, 151 U. S. 360
Clark v. Kansas City, 172 U. S. 443 (43 Law Ed. 467)
California National Bank v. Stateler, 171 U. S. 447.
Bostwick v. Brinkerhoff, 106 U. S. 3.
Buck v. Hamilton, 99 Ill. 507.

2. The defendants below, Brown, Steese & Clark, do not join in this writ of error; and, of course, could not. Having appeared and pleaded in bar, and exhausted their remedies in the state court, involving no Federal question, the judgment there was conclusive upon them.

Fitzgerald &c. Co. v. Fitzgerald, 137 U. S. 98.

And under the state statute and practice the charging order upon the plaintiff in error the Lippitt Woolen Company, was not a judgment. Unless voluntarily submitted to it could be enforced only by a new action directly against that Company :

Public Statutes of R. I., 1882, Ch. 208 Sec. 13 (Record p. 23).
Eddy v. Prov. Machine Co., 15 R. I. 7.

The dicta in Moshassuck Felt Mills v. Blanding, 17 R. I. 298, to the effect that the charging order amounts to a judgment are misconceived and misleading. For in both the cases there referred to, viz; of a trustee or garnishee answering and disclosing funds, and of one not answering, the statutes are express, that it can be enforced against him only by a new action after judgment obtained against the principal defendant. No execution can issue upon that judgment to be enforced against the trustee.

See Sec. 13 and 18, Record p. 23.

II.

If the case goes further the remainder all turns upon the question, where at the time of the attachment, and *for the purposes of the attachment*, was the *situs* of the debt due from the trustee or garnishee, the Lippitt Woolen Company, to Brown, Steese & Clark.

The facts upon which this question rests are these.

On August 13, 1889 John A. Cross, the plaintiff below, a citizen and resident of Rhode Island, commenced his action at law in assumpsit in the Court of Common Pleas of that state against Brown, Steese & Clark, citizens and residents of Massachusetts, and co-partners doing business in Boston, to recover upon two promissory notes given by them for $20,000 each. The writ was served on the same day in trustee process or foreign attachment, in the manner prescribed by the statutes of Rhode Island, upon the Lippitt Woolen Company, a Rhode Island corporation carrying on business there, for the purpose of attaching the debt due from it to the defendants Brown, Steese & Clark, and it is that debt thus attached, or sought to be attached, by Cross which is here in question.

Pursuant to the statute, copies of Cross's writ with notice of the attachment were duly sent by mail to the defendants Brown, Steese & Clark, who afterwards appeared and pleaded in bar in the case, and such proceedings were had that a verdict and final judgment were

obtained by Cross against them, with a charging order upon the Lippitt Woolen Company, as trustee or garnishee. (Printed record pp. 152-153).

King the plaintiff in error here had intervened in the action claiming title to this attached debt under the following circumstances. On August 12, 1889, the day before Cross commenced his action in Rhode Island, Edward Steese and Amasa Clark, members of the firm of Brown, Steese & Clark had filed their voluntary petition in the proper insolvency court of Massachusetts praying that their firm might be adjudged insolvent, upon which petition citation issued to Brown and was served upon him August 14 to appear August 21 ; and on this last day the firm was adjudged insolvent, and the publication of notice required by the Massachusetts statutes,—and from which time those statutes provide that the proceedings shall date and take effect,—was made on August 23, 1889, ten days after the service upon the Lippitt Woolen Company in the Rhode Island action. (Printed record pp. 69 to 73 and 130).

Assignees were appointed, and King claims title under a purchase from them November 19, 1890. (Record pp. 85 to 88.)

His title will thus be seen to rest entirely upon the Massachusetts insolvency proceedings.

It is true that he sought to bolster up his claim by a judgment of the Superior Court of Massachusetts. But that rested upon the same title and was attempted to be brought into this case only under the constitutional provision requiring faith and credit to be given to the judgments of the courts of other states, a matter which will be considered later.

As stated above it is beyond question that the judgment of the Rhode Island court finally determined the rights of the parties as between Cross and Brown, Steese & Clark.

And the plaintiff in error, the Lippitt Woolen Company, as trustee or garnishee therein, can have no interest except to see that its indebtedness to Brown, Steese & Clark is properly discharged to avoid

any double liability. But this, could there be any question about it as matter of law, was most carefully guarded against not only by the judgment of the Superior Court itself, (Record p. 26), but also by the bond of indemnity given to the Woolen Company, (Record p. 36). Aside therefore from the fact that these proceedings were plainly collusive, and especially coupled with that fact, it is submitted that this company has no standing here.

The only substantial questions therefore concern the claim of the plaintiff in error King. These, so far as they are open to him in this court, are set out in his petition for a new trial in the state court, (Record pp. 103 to 109), and may be summarized as follows :—

1. That the Rhode Island proceedings impaired the obligation of the contract between the Lippitt Woolen Company and Brown, Steese & Clark.

2. That the Rhode Island court failed to give full faith and credit to the insolvency proceedings, and to the judgment of the Superior Court, of Massachusetts.

3. That the Rhode Island court obtained no jurisdiction over the fund attached because that fund was not within the reach of its process, and that the later appearance and defense by Brown, Steese & Clark had no effect to give jurisdiction over the fund as against the claimant King, and therefore, that as against him, the proceedings in the state court were without due process of law.

To these contentions the Rhode Island court answered :

1. That the proceedings did not impair the obligation of the contract within the prohibition of the Federal Constitution.

2. To the second contention the court made two answers :

(a.) That it acquired jurisdiction prior to the Massachusetts proceedings in insolvency and prior to the service of the writ upon which was based the judgment in the Superior Court of that state, and that neither of those proceedings could operate to divest it of its jurisdiction thus first obtained :

(b.) And even were this not so, that the insolvency proceedings

were in the nature of a system of bankruptcy and had no extra-territorial force; and therefore that the title conferred by them would not, or at least need not, be recognized in another state.

3. To the third contention it answered that the *situs* of the attached debt, at the time of, and for the purpose of the attachment, was in Rhode Island; and therefore that the court acquired jurisdiction over it to subject it to the judgment afterwards obtained in the action.

FIRST

The Impairment of the Obligation of the Contract.

This question, as raised and stated upon the record, (p. 108, a), impugned only the action of the state court.

It was no where claimed that the statute of Rhode Island itself was in conflict with the Constitution. The only claim was that the state court wrongly construed the state statute as embracing attachments against non-residents. In other words, as stated by this court speaking through Mr. Justice Gray, in Central Land Company v. Laidley, "the question submitted to and decided by the state court "was one of construction only and not of validity:"

> Central Land Co. v. Laidley, 159 U. S. 103.
> Commercial Bank v. Buckingham, 5 How. 317, 341.
> Lawler v. Walker, 14 How. 149.

And even if under these decisions there could be any possible question, it seems to be fully concluded by the decision of this court in Reynolds v. Adden, 136 U. S. 348, where it is said in the opinion that this question was there raised. There is no question but that the statute here in question was in force long before this contract was made

and if it can be held void upon the ground under consideration, so must every other state statute authorizing attachments in garnishment of debts due to non-residents.

SECOND.

THE FAITH AND CREDIT DUE TO THE MASSACHUSETTS PROCEEDINGS.

(a.) If the Rhode Island court by the service of its process obtained jurisdiction over the debt and fund attached, either prior in point of time to the Massachusetts insolvency proceedings and the process of the Superior Court of that state, or because the insolvency proceedings had no effect outside of Massachusetts, there is an end of this question. Nothing that took place after the Rhode Island attachment could then deprive its court of that jurisdiction:

Wallace v. M'Connell, 13 Pet. 136.
Moran v. Sturges, 154 U. S. 256.

The question whether the debt sought to be attached was within Rhode Island for the purposes of the attachment, so as to give its courts jurisdiction over it will, as indicated above, be discussed later.

But assuming this, there would seem to be no question of faith and credit to be given to the Massachusetts proceedings, and indeed no such federal question involved in the case. The finding below is not a general finding that the court has jurisdiction, which we may concede would not be conclusive, but a finding of facts which, if true, gave jurisdiction to the Rhode Island courts as a matter of international law, by its right by priority to control the disposition of the property it had seized.

This finding by the court below that its process was earlier in point of time was purely a finding of facts which this court will not review upon writ of error:

Egan v. Hart, 165 U. S. 188.
Dower v. Richards, 151 U. S. 658.

If it be said that these findings or either of them involved a consideration,—it can hardly be said construction,—of the Massachusetts statutes, yet that will not alter the case. For this court will not review the construction given by the courts of one state to the statutes of another state :

Glenn v. Garth, 147 U. S. 360.
Lloyd v. Matthews, 155 U. S. 222.
Turner v. Comm. of Wilkes County 173 U.S. 461

It will of course be borne in mind that Cross, the plaintiff below, was never a party in any way to the Massachusetts proceedings either in the insolvency court or in the Superior Court, and was therefore in no way bound by them.

Ward v. Mount Pipe Mfg. Co. 42 L.R.A. 706 Conn.

(b.) Again the state court found that the insolvency system of Massachusetts is a system of involuntary insolvency, and therefore that proceedings under it, or resting upon it, were of no avail outside of Massachusetts as against the plaintiff Cross, a non-resident of that state and a citizen of Rhode Island, and also that no question of faith and credit to be given to those proceedings under the Federal Constitution arose in the case, a finding that is fully sustained by the cases in this court and elsewhere cited in the opinion, (Record p. 140).

And see the earlier cases of :

Blake v. Williams, 6 Pick 286.
Topham v. Chapman, 1 So. Car. Const. Rep. 283,
and Jones v. Blanchard cited at p. 285, (1785).
Wallace v. Patterson, 2 Har. & M'H. 463.
Burk v. M'Clain, 1 Har. & M'H. 236.
Taylor v. Geary, Kirby 313, (1787).

Security Trust Co. v. Dodd 173 U.S. 624

THIRD.

We proceed, therefore, to consider the remaining question, which, as stated above, is really the only Federal question, if any, involved in the case, viz.:—

DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT.

The first question that here arises is what is the test by which it is to be determined what is due process of law, or, as it is otherwise stated, the law of the land? The test must be found either in those fundamental principles of right and justice universally recognized in the systems of jurisprudence of civilized nations, or more narrowly in those principles and practices of international law recognized as proper and right under the laws of England from which the several states have derived their judicial systems, particularly as they were exercised and recognized by the colonies as adapted to their needs at the time of the adoption of the Constitution, and by the states at the time of the adoption of the fourteenth amendment:

Den ex dem Murray v. The Hoboken Land &c. Co., 18 How. 272.
D'Arcy v. Ketchum, 11 How. 165.
Davidson v. New Orleans, 96 U. S. 97.
Dent v. State of West Virginia, 129 U. S. 114, 123-124.
Hilton v. Guyot, 159 U. S. 113, 180.
Lowe v. State of Kansas, 163 U. S. 81, 85.

As said by this Court speaking through Mr Justice Gray in the last case cited; "Whether the mode of proceeding, prescribed by "this statute, and followed in this case was due process of law, depends "upon the question whether it was in substantial accord with the law "and usage in England before the Declaration of Independence, and "in this country since it became a nation, in similar cases."

The question therefore really reduces itself to this:— The several states being independent and foreign one to another, except as

restrained and limited by the Federal Constitution, (Pennoyer v. Neff, 95 U. S. 714 at 722), what is due process of law with respect to the attachment of debts due to non-residents tested by the principles of international law as recognized by the law of England and by the American colonies and states? The general practice of such attachments and their general recognition as valid exercises of jurisdiction under the principles of international law, indicate that there is nothing fundamentally unjust in them. And it requires very little knowledge of the law as recognized and practiced by the American colonies, to answer the question whether thus tested this attachment was made according to the law of the land as then and ever since understood by the American courts. But some review of this subject may assist in showing to what extent this right was recognized and practised upon, as well as where and within what narrow bounds the question here in issue has been raised, especially in recent years, in the state courts.

It may be well to point out first, however,—we will recur to it later,—that if the debt payable to a non-resident may be attached according to the international law generally recognized and practiced when the Constitution was adopted,—that is if the attachment of such debts then formed a part of the law of the land,—no argument from analogy as to the *situs* or *locus* of personal property for purposes of taxation, distribution, &c, &c, can avail the plaintiff here. The question in this court is merely whether such attachments were generally recognized as valid and legal so as to have been then properly a part of the law of the land, without any regard to what that law may have been in other respects and under different circumstances.

A. Attachment of Debts in English Law.

The attachment of debts due from a resident to a non-resident was well known from early times in the lower courts of England, particularly in the Mayor's Court of London as a custom of London. It was not however confined to London:

See Note to 1 Man. & Grang, 41.
Neale v Cottingham, 1 Hy. Black 132-133, Note;
Also 4 T. R. 189; (Attachment in Dublin 1764).

In fact it appears to have been in early times quite extensively practiced in the lower courts of England. And it is quite probable that it is from their acquaintance with its operation in these courts, with which they undoubtedly came most in contact, that the American colonists borrowed it as a part of their law:

See Gray J. in Jarvis v. Mitchell, 99 Mass. 530.
Sergeant on Attachment, Introduction p. 7, Note, (2d Ed.)

There can be no doubt that the Custom of London extended to the attachment of a debt due to a non-resident; in fact the proceeding was originally designed to compel the appearance of the defendant who was otherwise beyond the reach of process.

Thus in Tamm v. Williams, 3 Doug. 281, (Edition of 1831), decided in 1783, Lord Mansfield is reported as saying (p. 283):

"The very essence of the custom, is, that the defendant shall not "have notice; because it is a proceeding against an absent man, who "cannot be found and has nothing to be summoned by. It is a pro- "ceeding *in rem*, like confiscations in the exchequer."

And again (p. 284):

"The money due follows the person of the debtor; therefore the "garnishee must be within the city.

"Davenport, (and Buller J. assented); The custom goes to goods "in the city though the garnishee be elsewhere.

"Lord Mansfield agreed, and said that was the distinction between "goods and a debt owing."

And not only were such attachments from early times well known and practiced as a part of the English law, but they have always been recognized by the English courts as a valid exercise of jurisdiction by foreign courts under the principles of international law. This is the more noticeable at the present day as the tendency in England appears to have recently been to confine the jurisdiction under the Custom of London to as narrow limits as possible.

Thus foreign attachments of debts due Englishmen were recognized as valid in :

Chevalier v. Lynch, Doug. 170, (Lord Mansfield, 1779).
(Attachment in St. Christopher.)
Gould v. Webb, 4 E. & B. 933, 13th Plea, (1855).
(Attachment in New York.)

And within a very few years the same question raised by the plaintiff here has received a thorough examination as a matter of international law by the English courts :

In re Queensland &c. Co., L. R. 1892, 1 Ch. 219.

And see the same case below, L. R. 1891, 1 Ch. 536, where the argument from the maxim that personalty follows the domicile of its owner, *Mobilia personam sequuntur*, used here by the plaintiffs, was more especially considered.

And note the statement of the Scotch law by eminent Scotch barristers, (L. R. 1892, 1 Ch. 223), to which the Court of Appeals gave effect as valid within the principles of international law, to wit : "That "assuming the facts stated to be correct, then, according to the "law of Scotland and the *jus gentium* as administered in the Courts "of Scotland, the said arrestments will have priority over the assign- "ment of the debentures notwithstanding the fact that the creditor "in the debts is domiciled in Queensland, and the place of payment "of the debts in England, whatever the local law of those countries "may be as to the necessity of intimation to the debtor to perfect the "assignment."

See also London Ry. Co. v. Lindsay, 3 Macq. 99. (App. Cas. 1856-1861.)
North v. Stewart, L. R. 15 App. Cas. 452.

B. Attachment of Debts in the American Colonies.

In the American Colonies, at least in those belonging to England, the attachment of debts due to non-residents appears to have been nearly universal, although the cases also enforce the principle, affirmed

by this court in Cole v. Cunningham, that an English resident could not evade the bankruptcy laws of that country by going abroad to avail himself of the foreign attachment law:

Sill v. Worswick, 1 Hy. Black 665, 666-689. (Attachment in St. Christopher, 1782, See pp. 666, 689).

Beckford v. Turner, cited 4 T. R. 188, and 193, Cockpit 1785. (Attachment in Jamaica).

Kymer v. Larkin, 5 Bing 71.
(Attachment in Hayti 1819).

M'Intosh v. Ogilvie, cited 4 T. R. 193, n.
(Arrestment in Scotland, Tem. Ld. Hardwicke).

It appears also to exist in French Law:

Locke on Foreign Attachments, p. 1, Note.

Cazenove v. Prevost, 5 Barn & Ald. 70.

And in various other foreign systems:

Bar's International Law, p. 534, Note on §§119-120.

It is certainly difficult, and probably impossible, to now trace the origin and growth of these attachment laws in the thirteen original colonies. Attachments of both tangible and intangible property undoubtedly existed very early in their histories, and generally, if not always, were first adopted with regard to debts due to, and property owned by, non-residents, an interesting fact in view of this case.

The following, made up from such authorities as are accessible, and from lack perhaps of better and fuller sources of information not as comprehensive as could be wished, will yet serve as an indication of how generally the process of garnishment was employed in the American colonies.

According to the Duke of Yorke's Book of Laws, (see edition published by authority of the General Assembly, Harrisburg 1879, at page 10), process of attachment against the goods of debtors out of the jusrisdiction was provided in 1676 in all territories subject to his government.

In New York in addition to the Duke of Yorke's Laws the garnishment of debts due to non-residents was distinctly provided for as early as 1751 at least, (Colonial Laws of New York p. 445 &c. Chap. DCCCCVIII. §10; and see §6).

And in Grants and Concessions of New Jersey, by Leaming and Spicer, abuses in attachments against absconding debtors were regulated in 1683, evidently having existed before, (see 2d. Ed. p. 476).

Garnishment of debts due absconding debtors existed for several years before 1748, (see Preamble to Chap CI, Laws of New Jersey Vol. 1, p. 395), and the revised act of 1798 contained express provisions against non-residents, (Chap. DCCXII §26 of 1798; also Revision of 1800, p. 300). It has been found impossible with such authorities as are at hand to trace this latter provision to an earlier date. But it is said to have been originally a separate statute, (Depue J. in LeSage vs. Schmidt, 10 N. J. Law Journal 10).

In Pennsylvania in 1699, (Duke of Yorke's Laws, Supra, at pp. 289, 290), it was provided that writs of attachment issued "pursuant to anie Customs of cities or corporatians in England or according to anie Custom or usage in these parts of America," should be valid, and distinctly provided that they should not be issued except against non-residents, or those about to remove to some other colony or place, or those refusing to give sufficient security for their debts.

In 1705, (1 Laws of Pennsylvania p. 60, Chap. CXLIII), the statute expressly provided for garnishment proceedings of both tangible and intangible property, and against both residents and non-residents, and an amendment of 1723 made a distinction between attachments of the property of residents and non-residents.

See Sergeant on Attachments, p, 3.
Also Barnet's case, 1 Dall. 152.
Stevenson v. Pemberton, 1 Dall. 3.

And the English case of Phillips v. Hunter, 2 Hy. Black 402, grew out of a Pennsylvania attachment of a debt in 1784.

In Maryland garnishment of debts due to non-residents was provided for in 1715, (Laws of Maryland revised by Wm. Kilty, 1799, Vol. 1, Chap. XL), and supplemented in 1795, (see 4 Griffith's Law Reg. 944).

And see Wells v. Gheselin, 1 H. & M'H. 91, (1737).

In Virginia a process of garnishment of debts due non-residents by injunction in equity was provided for as early as 1744, (5 Hen. Stats. at large 220).

Carr J. in Kelso v. Blackburn, 3 Leigh at p. 306.

See also Hamilton v. Hudson cited in argument in 4 T. R. 187.

An anonymous case cited in Waring v. Knight, 1 Cooke's Bank. Laws, at p. 308.

In North Carolina garnishment of debts due non-residents existed in 1777, (Laws of North Carolina by Judge Iredell, 1791, p. 301 § 25 and p. 302 §27 a), and probably earlier, since Judge Iredell was directed to leave out acts repealed or obsolete, (Ibid p. 609), and these sections occur in a general act establishing courts and regulating legal proceedings.

South Carolina had a very full and complete act permitting attachment of debts due non-residents as early as 1712, (Statutes of South Carolina, Vol. 2, p. 588), and again in 1744, (Vol. 3, p. 616).

In Georgia, attachments of debts due non-reisdents existed as early as 1761, (Digest of Laws of Georgia by Robert and George Watkins, Philadelphia 1800 p. 67).

COMING NOW TO THE NEW ENGLAND COLONIES.

In Connecticut it was provided by the code of 1650, "that attachments to seize "uppon any man's lands or estate bee onely graunted for, or against, such goods as "are foreigner's, and doe not dwell or inhabitt within this jurisdiction," (The Code of 1650 printed by S. Andrus & Son of Hartford, without date, p. 22).

And the digest of 1784, (p. 34), contains an elaborate act for garnishment of both tangible and intangible property expressly including, (near end), debts due to non-residents.

See Treadway v. Andrews, 20 Conn. 384, 392-393.

In New Hampshire an act was passed in 1719 regulating attachments of goods or *estate* and providing in §2 for continuance of the proceedings and surety where the defendant was not an inhabitant or sojourner, (Acts and Laws of His Majesty's Province of New Hampshire in New England, Portsmouth 1771, at page 144). And the statute in "Laws of New Hampshire 1797" at page 153 et seq., (said in the margin and again at the end to have been passed in 1791), contains essentially the same provisions where the principal defendant is a non-resident, (see p. 157), and extends in express terms to "money, goods, chattels, rights or credits of any debtor," (see p. 153).

In Massachusetts attachments in suits against strangers seem to have been made as early as 1659; (Ancient Charters and Laws of Massachusetts Bay printed in 1814, Chap. XCIII, at page 193).

In 1671 it was enacted by the Colony of Plymouth that henceforth attachments should not be released upon appearance of the defendant, but should stand until

the execution granted upon the judgment should be discharged, (Plymouth Colony Laws, Dutton & Wentworth, 1836, p. 255, §14), and in Sec. 11, beginning on the next prior page "the common usage of this Court in ordinary cases, not to allow "Attachments on any Goods or other Estate, where the person can be found to be "responsible to the Plaint," is amended by giving the Court or Magistrate liberty to grant them.

In 1700 the practice with respect to attachments of goods and *estate* of residents and non-residents was regulated, (Acts & Laws of Mass. Bay & Charter 1692–1798, p. 122).

And finally attachment of debts due non-residents was still more clearly provided for in 1758, (Ancient Laws &c. and supra, p. 614, &c., where the term "credit" used in §2 near end, and in §§3, 4, 5 and 6, is to be noted). The Act of 1795, (Acts of 1794–5, p. 120, Chap. 65), revising the subject did not change its effect either as to the classes of property or persons upon which it operated.

Gray J. in Jarvis v. Mitchell, 99 Mass. 530.

In Rhode Island attachment of debts due to non-residents was distinctly provided for by Act of May, 1745, (Digest of 1744–5, p. 302), as follows:

"Whereas it often happens that Persons indebted, remove or dwell out of this "Colony, or conceal themselves therein, so that neither their Bodies can be arrested "nor their Estates attached in the ordinary Method of Law:

"For Remedy Whereof: Be it enacted by the General Assembly, and by the Au- "thority thereof, That when any Person hath removed or dwells out of this Colony, or "conceals himself therein, the personal Estate of such Person lodged or lying in the "Hands of his or her Attorney, Agent, Factor, Trustee, or Debtors, shall be liable "to be attached to answer any just Debt;" and providing that service of a copy of the writ upon "any Person or Persons who have such personal Estate in their "Hands" shall oblige such person to render an account of such property. The last paragraph of the Act refers to an earlier act of 1736, which besides providing for the attachment of the real estate of any persons "whose Bodys or Personal Estate "cannot be found within this Colony, * * * in the Same Manner as has "been heretofore customary to attach Personal Estates," further provided, "That "when any Person is absent or out of the Colony as aforesaid, the Personal Estate "of such Person, lodged in the Hands of any Inhabitant, shall be liable to Attach- "ment to answer any just debt." And see the preamble of the same Statute.

And there are still earlier references to the process of attachment generally, (see Digest of 1719, p. 95, and Digest of 1730, p. 100.)

The first volume of Rhode Island Reports, (containing the earliest reported cases of its courts), contains only a few cases before 1849 and none earlier than 1828. But the English cases of Mawdesley v. Parke,

cited in 1 Hy. Black, pp. 680-681, 686; and Hunter v. Potts, 4 T. R. 182; grew out of attachments of debts due to foreigners made in Rhode Island before 1770 and in 1785 respectively.

It is well known to the Rhode Island courts and bar that it was not until 1870 that any attachment either of tangible or intangible property, real or personal, was allowed by the statutes of the state so long as the defendant was within the state, unless indeed it may have been permitted in very early colonial times, but has always been allowed as to all kinds of property including debts at least since 1745 against non-residents.

And besides these statutory provisions of the several colonies, it is believed that such process very early existed by custom and as a part of the law brought from England. There are indications in several of the early statutes and their preambles which seem to warrant such a conclusion.

C. American Cases Since the Constitution.

It is impossible within the limits of a brief to trace this question through all of the statutes and decisions of the courts of the several states since the adoption of the Constitution. But the attachment of debts due to non-residents is believed to have always existed to a greater or less extent in all or certainly in very nearly all of the states, (See Griffith's Law Register published in 1821–1822, Vols. 3 and 4, question 132 under the names of the several states).

And down to the year 1890 when the case of Missouri Pacific R. R. Co. v. Sharitt was decided by the Kansas Supreme Court, (43 Kans. 375), there is believed to be no reported case in any state which even seriously questioned the validity of such an attachment *although there were a number of cases in which the garnishee was held to be not liable because not served within the state of his residence.* (Compare the Custom of London as stated by Lord Mansfield in Tamm v. Williams, 3

Doug. 281, Supra). This absence of adverse decision is not due to the fact that the question was not raised, for it has been a number of times. But the decisions have always been against the plaintiffs' contention here.

See Blake v. Williams, 6 Pick. 286.
Embree v. Hanna, 5 Johns, 100.
Saunders v. Williams, 5 N. H. 213.
Dunlap v. Rogers, 47 N. H. 281, 287.
Morgan v. Neville, 74 Pa. St. 52.
H. & St. J. R. R. Co. v. Crane, 102 Ill. 249.
Wyeth &c. Co. v. Lang, 127 Mo. 242.
Pomeroy v. Rand, McNally & Co. 157 Ill. 176, 185–186.
Bragg v. Gaynor, 85 Wis. 468.
Berry Bros. v. Nelson Davis & Co., 77 Tex. 191.

And the validity of such proceedings has been repeatedly assumed by this Court:

Kennedy v. Brent, 6 Cranch 187.
Brashear v. West, 7 Peters 608, 617 (5).
Mattingly v. Boyd, 20 How. 128.
Wallace v. M'Connell, 13 Pet. 136, 151.
Fitzgerald &c. Co. v. Fitzgerald, 137 U. S. 98.
Cooper v. Reynolds, 10 Wall. 308 at 317.

See Green v. Van Buskirk, 5 Wall. 307, 314.
Cole v. Cunningham, 133 U. S. 107.

D. Interstate Corporations as Garnishees.

We might stop our review of the cases at this point. It has been shown, we think, that the question here presented is one of international law, or at least of comity; that the attachment of debts due to non-residents is, and always has been, recognized by that law and by the law of England as a valid exercise of jurisdiction; that it was

generally authorized and practiced in all of the colonies at the time of the adoption of the Constitution, and in all of the states at the time of the adoption of the 14th amendment; and that it must, therefore, be regarded as due process of law under the Constitution.

Nevertheless because of the confusion, more seeming than real, recently introduced into the decisions of the state courts in a particular class of cases *where the garnishee is a corporation carrying on business in more than one state*, and because an examination of those cases will show how little there is even in them to support the plaintiffs' contention, we will briefly refer to them.

The confusion apparently originated in the case of the Missouri Pacific Ry. Co. v. Sharitt decided in 1890, (43 Kans. 375), or rather in the concurring and dissenting opinions of that case. The case certainly seems to overrule, although not expressly doing so, the earlier case of Burlington & Missouri &c. R. R. Co. v. Thompson, 31 Kans. 180, in which Mr. Justice Brewer gave the opinion. Both involved the effect to be given by the courts of one state to the exemption laws of another, and the same consideration has always exerted a considerable influence upon this class of decisions.

See Mason v. Beebee, 44 Fed. Rep. 556.

But notwithstanding some statements to the contrary, the great weight of authority even in this class of cases is that a corporation doing business in more than one state may be held as garnishee wherever it can be sued by the principal defendant, especially if it has been compelled by statute to submit itself to the jurisdiction of that state in order to entitle it to do business therein :

Mooney v. Buford &c. Mfg. Co., 72 Fed. Rep. 32 (7th Cir. Ct. of Apps).

National Fire Ins. Co. v. Chambers, 53 N. J. Eq. 468.

Neufelder v. German Am. Ins. Co., 6 Wash. 336.

Lancashire Ins. Co. v. Corbetts, 165 Ill. 592.

Harvey v. Great Northern Ry. Co., 50 Minn. 405.
Railroad v. Barnhill, 91 Tenn. 395, 399.
Willard v. Sturn, 96 Iowa 555.
Campbell v. Home Ins. Co., 1 S. C. (N. S.) 158, 169, &c.
Howland v. C. R. I. & P. Ry. Co., 134 Mo. 474.
Morgan v. Neville, 74 Pa. 52.
Railroad v. Peoples, 31 Oh. 537.
National Bank v. Huntington, 129 Mass. 444.
Cousens v. Lovejoy, 81 Me. 467.
Burlington & M. R. R. Co. v. Thompson, 31 Kans. 180-195-196.
Selma &c. R. R. Co. v. Tyson, 48 Ga. 351.
Connor v. Hanover Ins. Co., 28 Fed. Rep. 549,
Hankinson v. Page, 19 Abb. N. C. 274. (Wallace J. in U. S. Cir. Ct).

And in Rhode Island in,
Moshassuck Felt Mill v. Blanding, 17 R. I. 297.

And see McBee v. Purcell Nat'l Bank, 37 S. W. Rep. 55. (Ct. of Apps. of Indian Ter).
Mason v. Beebee, 44 Fed. Rep. 556.

In some states the statute law has not in the past contained or does not now contain any provisions by which a foreign corporation can be served in garnishment, and in others they can be so served only under certain conditions. Of course these cases furnish no authority against the above cases, although they are frequently cited as such authority:

See National Bank v. Huntington, 129 Mass. 444.
American Exp. Co. v. Judge of Wayne Cir. Ct. cited in Moore v. Wayne Circuit Judge, 55 Mich. 84 at 89.
Bridge & Iron Works v. Circuit Judge, 73 Mich. 155, 157.
Morawetz v. Sun Ins. Office, 96 Wis. 175, 179.
Myer v. Liverpool &c. Ins. Co., 40 Md. 595.

Comp. Central Trust Co. v. Chattanooga &c. R. Co., 68 Fed. Rep. 693.
Craig v. Gunn, 67 Vt. 92.

National Bank of Wilmington vs. Of Patrick

A second class of these cases hold that such a corporation can be served in garnishment only in the jurisdiction where it has its domicile:

Reimers v. Seatco Mfg. Co., 70 Fed. R. 573, (6th Cir. Ct. App).
Douglass v. Phenix Ins. Co., 138 N. Y. 209.
Louisville & N. R. Co. v. Nash, 23 South. Rep. 825. (Ala. 1898.)
Renier v. Hurlbut, 81 Wis. 24.

(Attachment in Illinois of money due on judgment in Wisconsin).
See also Central Trust Co. v. Chattanooga &c. R. Co., Supra.
National Bank of Wilmington vs Pardee "

And Atchison &c. R. R. Co. v. Maggard, 6 Colo. App. 85, which although not a decision of a court of last resort, may perhaps be placed upon the same ground, though the discussion goes further.

The case of Craig v. Gunn, 67 Vt. 92, evidently either belongs with the the cases where there is not a sufficient statute for service of process, or with those holding that the corporation was not within the state in its corporate capacity, although in this case the garnishee operated a small piece of railroad within the state.

Compare Jones v. Dillihanty, 68 Vt. 490.
Nichols v. Hooper, 61 Vt. 295.

Compare also with this class of cases;
Lafayette Ins. Co. v. French, 18 How. 404.
Barrow Steamship Co. v. Kane, 170 U. S. 100.

A third class appears to go further;
Missouri Pacific R. Ry. Co. v. Sharitt, 43 Kas. 375, 378 et seq.
Illinois Cent. R. R. Co. v. Smith, 70 Miss. 344.
See Singer Mfg. Co. v. Fleming, 39 Neb. 679, 686-690.
Also Atchison &c. R. R. Co. v. Maggard, 6 Colo. App. 85.

The above review of cases in which corporations carrying on business in more than one state are garnishees shows that the only states which have, even in such cases, adopted anything like the plaintiffs' contentions are Kansas, Mississippi and perhaps Nebraska. But so far as known the courts of last resort in no state has as yet adopted the plaintiffs' contention in the case of an individual garnishee. The

lower court in Missouri for the District of St. Louis did so at one time, but these cases were afterwards overruled by the Supreme Court of that state in:

Wyeth Hardware &c. Co. v. Lang & Co., 127 Mo. 242.

E. Attachments of Debts Due in Another State and Before They Are Payable.

It was contended by the plaintiffs in error in the courts below, and the same may be repeated here, that because the debt attached was or may have been payable in Boston, and because the attachment was made before it was payable according to the contract of purchase between Brown, Steese & Clark and the Lippitt Woolen Company, the Rhode Island Courts acquired no jurisdiction by the attachment. It is submitted, however, that neither of these involves any Federal question. They are both questions of general law and practice only.

But be this as it may they were both decided in England, adversely to the plaintiffs' contention here, two hundred years and more ago.

The first of these contentions would destroy all advantage of garnishment against non-residents, which is frequently called foreign attachment from the very fact that it is commonly used to collect debts due from non-residents. It is, therefore, not surprising to find that it is well settled, both in England and in this country, that the place of payment is immaterial:

Andrews v. Sir Robert Clerke, Carthews Rep. 25.
Banks v. Self, 5 Taunt. 234.
Harington v. Macmorris, 1 Marsh. 33, 35; and 5 Taunt. 228, 232.
Locke on Foreign Attachment, pp. *29-30.

Blake v. Williams, 6 Pick. 286, 315.
Sturtevant v. Robinson, 18 Pick. 175, 179-180.
Nichols v. Hooper, 61 Vt. 295.

Campbell v. Home Ins. Co., 1 S. C. n. s. 158, 169-170.
Pomeroy v. Rand, NcNally & Co., 157, Ill. 176, 185-186.
East Tenn. &c. R. R. Co. v. Kennedy, 83 Ala. 462, 464.
H. & St. J. R. R. Co. v. Crane, 102, Ill. 249, 258.
Neufelder v. Ins. Co., 6 Wash. 336.

So also the principle of *debitum in presenti solvitur in futuro* has always been applied to garnishment proceedings both in the old English cases:

Robbins v. Standard, Siderfin 327.
Dalton & Selby's Case, 3 Leon. 236, (cccxxiv).
Pearse v. Calcott, Jones 406.
Self v. Kennicot, 2 Shower, Case 460.
1 Rolle's Abrid. Custom of London, p. 553, (G, 2).
See Lodges Case, 2 Leon. 156, (cxc).

And in the several states of this country; see cases cited in the opinion of the court below, (record p. 140), and the following additional:

Walker v. Gibbs, 2 Dall. 211.
Cottrell v. Varnum, 5 Ala. 229.
Clark v. Brown, 14 Mass. 271.
Palmer v. Noyes, 45 N. H. 174.
1 Freeman Executions, Sec. 165.
8 American and English Encycl. of Law, 1165-1166.

Even though, to ascertain the amounts, accounts have to be taken:

N. E. Marine Ins. Co. v. Chandler, 16 Mass. 275-278.
Ward v. Lawson, 6 Pick. 358.
Webb v. Peele, 7 Pick. 247.
Atwood v. Dumas, 149 Mass. 167-170.
Ronan v. Dewes, 17 Mo. App. 306.

III.

The Argument From Analogy.

The chief argument of the plaintiffs in error is one from analogy, that the location of personal property, especially of such intangible property as debts, follows the domicile of the owner, because it does so in certain other instances, as in taxation and distribution of intestate estates, &c. As hereinbefore suggested, it is submitted that this cannot prevail against the general recognition of the validity of the attachment of such debts under the principles of both the English law adopted in this country, and of international law and the doctrine of comity.

The argument however is not new, but never has prevailed. It was argued over a century ago in Hunter v. Potts, 4 T. R. 182, but it was not found necessary to then decide it. But the question did arise and was directly decided in Re Queensland &c. Co., L. R. 1891, 1 Ch. 536, and 1892, 1 Ch. 219, Supra, and is particularly referred to in the opinion of Mr. Justice North in the lower court. The court of Appeals treated it as wholly a question of international law or of comity.

The maxim "*mobilia personam sequuntur*," including both tangible and intangible personal property, was much used by the older writers of the civil and continental European law. "Of late years, however, "the current has set very strongly even in commercial countries, "towards enforcing the *lex situs* on the title to chattels:"

Westlake's Private International Law, §267.

As said by Ld. Loughborough, in Sill v. Worswick, 1 Hy. Blk. 690 Supra, "It is a clear proposition, not only of the law of England but "of every country in the world where law has the semblance of science, "that personal property has no locality."

See Ld. Wensleydale in Fenton v. Livingstone, 3 Macq. Sc. App. Cas. 547.

Ld. Brougham in Bane v. Whitehaven &c. R. R. Co., 3 Ho. Ld. Cas. 19.

Doglioni v. Crispin, L. R., 1 Ho. Ld. 301.

Its locality is a mere fiction of law, as this court has had occasion to frequently point out, and a fiction which will give way to the operation of local rights and obligations conferred or imposed by the law of other jurisdictions:

Green v. Van Buskirk, 7 Wall. 139, 150.
Hervey v. R. I. Locomotive Works, 93 U. S. 664, 671.
Pullman Car Co. v. Pennsylvania, 141 U. S. 18, 22.
State Railroad Tax Cases, 92 U. S. 575, 607.

Undoubtebly the fiction has a proper place in private international law where rights of title are derived directly from the owner, as for example, in the distribution of intestate estates, or the voluntary conveyance of property, and where no adverse rights under the *lex rei sitae* are invoked by strangers to the title. But there are so many instances in which rights invoked under the *lex rei sitae* prevail that the maxim may be said to have lost all force as a guiding principle where the rights of third persons are involved.

In all statements and discussions of it which have come under our observation, no distinction between tangible and intangible property is made and it is confidently submitted none can be made. For it is universally conceded that trustee process reaches tangible property, goods and chattels in the possession of the trustee or garnishee as well as intangible debts and credits. The Rhode Island statutes, (Record pp. 74-78), expressly recognize this, and both were attached in this case in the hands of the Lippitt Woolen Company, (See trustee's affidavit, Record p. 1). But unless a distinction is made between them this court has already decided all questions here in issue:

Reynolds v. Adden, 136 U. S. 348.
Security Trust Co. v. Dodd 173 U. S. 624

And in Booth v. Clark, 17 How. 322, it has certainly gone far to decide that a debt may have its *situs* at the domicile of the debtor. For while the earlier part of the opinion in that case is taken up with a discussion of the right of the local receiver to be recognized in a foreign jurisdiction, a right which was apparently assumed in the case of the assignee in insolvency in both Reynolds v Adden, supra, and in Crapo v. Kelly, 16 Wall. 610, the latter part of the opinion rests upon

the denial that the claim or debt was property within the State of New York at the time of the appointment of the receiver.

It may indeed well be doubted whether the refusal of the several states to recognize the right of foreign receivers, assignees in bankruptcy and insolvency, and executors and administrators, to sue in their courts is not in reality based upon the fact that they regard the property as being within their own territory, and under their own jurisdiction, for the protection of their own citizens. The refusal to permit these officials to sue in their representative capacity amounts to little if their title is recognized. The title to the property is the substance, the right to sue is but the shadow. It is believed and submitted that they are not permitted to sue because their title will not be recognized against other claimants, and that such is substantially the decision in Booth v. Clark.

Certainly debts and credits are regarded as having a *locus* at the domicile of the debtor so as not to pass to the assignee in bankruptcy or insolvency of another state; (See cases referred to and cited above under II, Second, b). And so too they have a similar locality for the purpose of ancillary administration:

Pinney v. McGregory, 102 Mass. 186.
Vaughn v. Barret, 5 Vt. 333.
Holcomb v. Phelps, 16 Conn. 127, 134.
Partnership Est. of Hy. Ames, 52 Mo. 290.
Atty. General v. Bouwens, 4 M & W. 171, 191.
See Wilkins v. Ellett, 108 U. S. 256.
Beers v. Shannon, 73 N. Y. 292, 298.

A debt from its very nature is incapable of actual seizure by attachment. All that can be done is to notify the person owing it not to pay his creditor until the action or suit begun by that process is determined. The procedure is in its nature equitable and very similar to an injunctive order of the court; and in some states, particularly in Virginia and Kentucky, it takes this form.

And in Massachusetts the statute extending the chancery jurisdiction to property &c. of a debtor "which cannot be come at to be attached or taken on execution in a suit at law against such debtor,"

(Pub. Stat. 1882, Ch. 151, Sec. 2, Clause 11), was, as originally enacted, (1851, Ch. 206), confined to suits against non-resident debtors; and since its change to apply to suits against all debtors, (in 1858, Ch. 34), has been repeatedly held to reach the property of non-residents:

Silloway v. Columbia Ins. Co., 8 Gray 199.
Davis v. Werden, 13 Gray 305.
McCann v. Randall, 147 Mass. 81.
Wilson v. Martin &c. Co., 149 Mass. 24; 151 Mass. 515.
Comp. Pettibone v. Toledo R. R. Co., 148 Mass. 411.

Compare also the Massachusetts statute of 1839, Ch. 158 for attachment of property of foreign corporations; and,

Ocean Ins. Co. v. Portsmouth Ry. Co., 3 Met. 420.
Danforth v. Penny, 3 Met. 567.
Natl. Bank of Commerce v. Huntington, 129 Mass. 444.

See also Bragg v. Gaynor, 85 Wis. 468.

And so under the general chancery jurisdiction in the absence of special statutes:

Earle v. Circuit Judge, 92 Mich. 285.
Dollman v. Moore, 70 Miss. 267.
Pendleton v. Perkins, 49 Mo. 565.
Quarl v. Abbett, 102 Ind. 233.
Montgomery v. McDermott, 83 Fed. Rep. 576.

Corporate stock is another illustration of the same principle. Shares of stock are incorporeal rights and choses in action much like ordinary debts, though more intangible. In a general sense they are the obligations of the corporation to pay to the holder a proportional share of its net assets upon winding up, and for the purpose of distribution as a part of his estate undoubtedly have their *situs* at the domicile of the owner. But for the purpose of attachment they can be reached only at the home of the corporation, and the process to reach them is, in effect, the same trustee process as that to reach other debts, a notice or warning to the corporation to hold the shares to meet the event of the action.

This is particularly so under the statute and practice in Rhode Island:

See the statute Ch. 208, pp. 22-23 of the record.

And although like statutes exist elsewhere we are not aware that it has ever been held that they do not reach stocks held by non-residents, as well as those held by resident debtors:

Cook on Stock, §§ 483-485.

In fact in all cases where the question of jurisdiction *in rem* arises between courts of different sovereignties, the material fact is the ability of the court to reach and control by its process the specific property, or in case of intangible property the person who has it within his power to dispose of that property. The courts of the domicile may determine *rights* to the property, whether tangible or intangible, but they cannot transfer the thing itself. The latter can only be done by the courts of the *lex rei sitae.*

Bar's International Law, (Boston 1883), §§ 58, 59, pp. 219-228.

And compare Callahan vs Woodbridge 171 Mass. 595.

Indeed this very case illustrates the impossibility of, fixing any other locality for the debt for purposes of attachment than that of the debtor garnishee. When the assignees of Brown, Steese & Clark sought, (in order, plainly, thereby to affect this action), to sue the Lippitt Woolen Company in the Superior Court of Massachusetts, the action to which they now ask that faith and credit be given, they found it impossible to obtain jurisdiction, either actually or constructively over that company except by resorting to the same process that is here impugned, (Record pp. 4 and 57). And it is very plain that had not that company voluntarily appeared, (and the record leaves no doubt collusively appeared), in the case, there could have been no judgment there *in personam* against it, but a judgment only against the debt or property attached, (if there really was any,—the record shows none), in the hands of Leonard the garnishee.

And not only did it thus voluntarily appear and simply bring to the attention of the court the fact that it had been garnished in Rhode Island, upon which, by the settled practice of Massachusetts, the case

must have been dismissed, or at least have been continued to await the result of the Rhode Island action:

Winthrop v. Carlton, 8 Mass. 456.
Hull v. Blake, 13 Mass. 153.
Amer. Bank v. Rollins, 99 Mass. 313.

but it *voluntarily submitted the whole case upon an agreed statement of facts;* and the course then taken by the Superior Court in reversing its original decision, which by the whole line of authority in Massachusetts was clearly right, and rendering the judgment it did upon the indemnity to the Woolen Company, and staying execution even against the property attached in the hands of the garnishee in Massachusetts, to which at least, if the plaintiff was entitled to any judgment at all, it was clearly entitled, was certainly anomalous and to us has always been incomprehensible.

(See Record pp. 1 to 27 and 34 to 70).

Conclusion.

In conclusion it is plain that to now hold, against this practically universal consensus of practice, that such proceedings are not due process of law, as the plaintiffs here contend, will be to abrogate and annul all these statutes and proceedings as applied to non-resident debtors, and to place all choses in action, (and we fail to see why not also all tangible personal property as well, for, as Ld. Loughborough said, legally it has no locality), beyond the reach of creditors except by compelling their assignment, if they can, through the local courts of the debtor's domicile.

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KING *v.* CROSS.

ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

No. 28. Argued October 12, 1899. — Decided December 11, 1899.

An attachment regularly made in Rhode Island at the suit of a citizen of Rhode Island, of a debt due from a Rhode Island corporation to a citizen of Massachusetts, the day after the latter had filed in Massachusetts a petition for the benefit of the Massachusetts insolvent laws, but eight days before the publication of notice of the issue of a warrant on that petition, is a valid attachment, and is not dissolved by a subsequent assignment under those laws, notwithstanding the provision thereof dissolving attachments of the property of an insolvent debtor, made within four months before the first publication of such notice, that provision having no extra-territorial effect.

THE firm of Brown, Steese & Clarke, established in Boston, on the 12th day of August, 1889, filed in the proper court in and for the county of Norfolk, Massachusetts, a petition praying to be allowed to take the benefit of the insolvent laws of the State of Massachusetts. On the day after — that is, on the 13th of August, 1889 — John A. Cross, a citizen of Rhode Island, residing at Providence in that State, commenced suit in Rhode Island against the members of the firm of Brown, Steese & Clarke on two negotiable notes drawn by the firm. The Lippitt Woolen Company and two other Rhode Island corporations carrying on business in that State were served, on the day the suit was filed, with trustee process on the averment that these corporations were indebted to the above named firm. The Lippitt Woolen Company answered under the trustee process, disclosing the sum of its indebtedness. In the insolvency proceedings an assignee was appointed, and he commenced suit in Massachusetts against the Lippitt Woolen Company to recover the debt due by that corporation to the insolvent firm, and against which debt the trustee process had been issued in Rhode Island, and Hiram Leonard, a resident of Massachusetts, and who was indebted to the Lippitt Woolen Company, was made a garnishee. Pending

these proceedings the assignee sold the claim against the Lippitt Woolen Company and one against another corporation to Theophilus King, a resident of Massachusetts, and he was substituted as plaintiff in the action in Massachusetts above referred to. The Lippitt Woolen Company pleaded the pendency of the trustee process against it in the Rhode Island court. The Massachusetts court entered judgment in favor of the plaintiff King and against the Lippitt Woolen Company and the garnishee Leonard. The court, however, directed that execution on the judgment be stayed and the parties enter into a stipulation that no execution should issue until the proceedings in the Rhode Island action had been fully determined. Thereupon King was allowed, by the Rhode Island court, to become a party to the action there pending so far as necessary to enable him to assert his title to the indebtedness due by the Lippitt Woolen Company and other corporations to the firm of Brown, Steese & Clarke, which debts were covered by the trustee process previously issued in Rhode Island under the circumstances already stated.

In the Rhode Island court both King and the Lippitt Woolen Company pleaded the proceedings under the insolvent laws of Massachusetts, the sale by the assignee to King and the judgment of the court in Massachusetts, heretofore referred to, and asserted that thereby the title to the indebtedness due by the Lippitt Woolen Company to Brown, Steese & Clarke passed to King, and that such title was superior to any lien supposed to have arisen from the trustee process which had been issued in the Rhode Island action. The court gave judgment in favor of the plaintiff Cross, charging the Lippitt Woolen Company for the amount of the debt due by that corporation to the firm of Brown, Steese & Clarke, as stated in the answer of the Lippitt Woolen Company to the trustee proceedings. The court therefore rejected the claim of title preferred by King, and acquired by him in the insolvency proceedings in Massachusetts, and in effect decided that the trustee process in Rhode Island operated to create a paramount lien on the debt due by the Lippitt Woolen Company, and was

unaffected by the insolvency proceedings in Massachusetts and the action taken on the subject in the courts of that State. Motions for a new trial upon numerous grounds were filed on behalf of the Lippitt Woolen Company and the claimant King. These motions were heard before the Appellate Division of the Supreme Court of Rhode Island, and that court overruled them. 19 R. I. 220. The case was then brought to this court by writ of error. In substance, the grounds relied on in this court for a reversal are, that at the time of the service of the trustee process the Rhode Island court was wholly wanting in jurisdiction over the defendants in the action, residents of Massachusetts, and over their property, and that by charging the Lippitt Woolen Company as trustee for the benefit of the plaintiff Cross, the tribunal last mentioned failed to give full faith and credit to the judicial proceedings in the insolvency court in Massachusetts.

Mr. Charles H. Hanson for plaintiffs in error. *Mr. John C. Coombs* and *Mr. Robert W. Burbank* were on his brief.

Mr. William R. Tillinghast for defendant in error. *Mr. James Tillinghast* was on his brief.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court.

It is first asserted that the judgment of the Supreme Court of the State of Rhode Island was not due process of law, and was in conflict with the Fourteenth Amendment to the Constitution of the United States, because it recognized the right, in a suit brought in Rhode Island against a non-resident defendant, to garnishee the resident debtor of such defendant. It is contended that a judgment rendered by a court against a defendant who is neither within its jurisdiction, by his person or his property, is wholly void, and any attempt to enforce such judgment amounts to a denial of due process of law. The Rhode Island court, it is claimed, had no jurisdiction over the defendant firm because it was a resident of Massachusetts, and

it is asserted that such court had no property of the firm within its control upon which to exercise its jurisdiction. True it is the Lippitt Woolen Company, which alone was charged by the judgment, was made a trustee under the Rhode Island process, and was indebted to the Massachusetts firm; but this fact, it is asserted, did not establish that there was any right in Rhode Island to be subjected to the jurisdiction of the courts of that State, for the following reasons: The situs of movable property is at the domicil of the owner of such property, and therefore the situs of the claim or credit held by the Massachusetts firm against the Lippitt Woolen Company was not in Rhode Island, where the Lippitt Woolen Company was resident, but was in Massachusetts, where the creditor firm was established. The contention in substance is that any process of foreign attachment predicated upon the assumed right to levy on debts due to non-residents by persons within the State wherein the process issues is absolutely void, hence a denial of due process of law.

We need not enter into a review of the contentions thus presented, since they were all considered by this court at its last term and held to be untenable. *Chicago, Rock Island &c. Railway* v. *Sturm*, 174 U. S. 710.

Conceding, however, as a general rule, that jurisdiction as to a non-resident can be acquired by trustee or garnishment process against a resident debtor of a non-resident defendant, it is urged that the facts in this case cause it to be an exception to this general principle. The proceedings in involuntary insolvency were begun in Massachusetts before the commencement of the suit in Rhode Island. The legal effect of the insolvency proceedings, it is asserted, was to vest all the credits of the insolvent in the court of insolvency of Massachusetts, and therefore there could legally be no debt due to the non-resident insolvent in Rhode Island, because that debt by operation of the Massachusetts insolvent proceedings had ceased to be a debt due the firm, and had become a debt controlled by the Massachusetts insolvent court. The debt in Rhode Island originally due to the firm in Massachusetts can not, it is claimed, be treated as continuing after the insolvency

proceedings to be due to the firm without refusing to give effect to the proceedings in Massachusetts, and such refusal is therefore asserted to be the necessary result of the judgment of the court of Rhode Island which is before us for review.

The contention thus relied upon, it is argued, is not contrary to the settled rule that insolvency proceedings of the several States do not have extra-territorial operation; and it is also asserted that the claim here relied upon is not contrary to the decision of this court in *Security Trust Co.* v. *Dodd, Mead & Co.*, 173 U. S. 624. In that case it was held that a general assignment for the benefit of creditors, made by an insolvent under the insolvent laws of a State, did not operate to exempt tangible property, situated at the time of the insolvent assignment in another State, from seizure in the State where the tangible property was actually situated. This decision, it is claimed, was but an exemplification of the general rule limiting insolvency proceedings of one State to the jurisdiction of that State and depriving them of extra-territorial operation. A mere credit, however, it is asserted, conceding it to be subject to attachment or trustee process at the residence of the debtor, is governed by a different rule from that which controls tangible property. Such credit, the claim is, being at the situs of the domicil of the creditor, passes to the custody of the insolvent court when the insolvent law so provides, and therefore comes under the dominion and control of the insolvent court having jurisdiction of the person of the creditor. As by operation of law the credit from the date of insolvency proceedings at the residence of the creditor ceases to be under his dominion, but, on the contrary, is *in gremio legis*, the power to levy by garnishee or trustee process on the same at the residence of the debtor is destroyed. But the predicate upon which this contention rests is that the Massachusetts insolvent proceedings operated to deprive the insolvent of all control over his assets prior to or at the time when the suit in Rhode Island was commenced and the trustee process there issued. If this premise is unsound the whole contention is without merit, and therefore the legal proposition deduced from it need not be examined.

Opinion of the Court.

The statutes of the State of Massachusetts on the subject of insolvency provide: First, for the adjudication by the judge of the court of insolvency upon a voluntary petition; second, for the issue of a warrant for the sequestration of the effects of a petitioning debtor; third, for publication of a notice of the issue of this warrant; fourth, for a meeting of creditors and the election of an assignee; and, fifth, for an assignment by the judge of the court of insolvency to the assignee so elected. Mass. Pub. Stat. 1882, ch. 157, §§ 16, 17, 24, 40, 44. The forty-sixth section of the act which provides when proceedings under it shall operate to divest the debtor of control over his property is reproduced in the margin.[1]

Now the petition in insolvency on behalf of the firm of Brown, Steese & Clarke was filed in the court of insolvency on August 12, 1889, a day prior to the commencement by Cross of his action in Rhode Island and the service of the trustee process. The warrant, however, addressed by the Massachusetts insolvent court to the sheriff, directing him as messenger, to take possession of the estate of the insolvent, was not issued until August 21, 1889, the first publication of notice of the issue of such warrant was made on August 23, 1889, and

[1] "Sec. 46. The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution upon a judgment against him, at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate. The assignee may redeem all mortgages, conditional contracts, pledges, and liens of or upon any goods or estate of the debtor, or sell the same subject to such mortgage or other incumbrance, and if a mortgage is foreclosed, pending proceedings in insolvency, and before the appointment of an assignee, or within sixty days thereafter, the assignee, when appointed, may redeem the same at any time within sixty days after the appointment, with remedies similar to those provided by law for the redemption of mortgages before foreclosure."

the assignment to the assignees elected by the creditors was made by the judge of the insolvency court on September 4, 1889. The first question presented then is: At what date was the firm of Brown, Steese & Clarke, by force of the insolvent laws of Massachusetts, divested of the title and control of their personal property, tangible and intangible? If the Massachusetts insolvent law did not, from the mere fact of filing the petition of insolvency, operate to divest the insolvent of all control of his credits, it is obvious that such control existed in the creditor when the suit was begun in Rhode Island, for the only step taken in the Massachusetts proceedings prior to the commencement of the suit in Rhode Island was the filing of the petition in insolvency. Every other step in the insolvency was taken after the Rhode Island suit was begun, and the trustee process there levied. Now the text of the Massachusetts statute clearly provides that "the assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution upon a judgment against him, at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings." The decisions of the Supreme Judicial Court of Massachusetts leave no doubt that up to the first publication of notice of the issuing of the warrant the insolvency proceedings do not divest the insolvent of all control of his assets and credit. We premise, however, before reviewing these decisions, that the portions of the present insolvent statutes of Massachusetts, as contained in chapter 157 of the Public Statutes of 1882, so far as they bear upon the question now under consideration, substantially reproduce the provisions of chapter 163 of the statutes of 1838. We place in the margin a portion of section 5 of the latter act, which, it will be seen, declares the effect of a formal assignment by the judge of the court of insolvency in practically similar language to that contained in section 46 of chapter 157 of the Public Statutes of 1882, already referred to.[1]

[1] "SEC. 5. The said judge shall, by an instrument under his hand and seal, assign and convey to the person or persons chosen or appointed assignees as aforesaid, all the estate, real and personal, of the debtor, excepting

Under the statute of 1838, it was early settled in Massachusetts that the property of an insolvent debtor was not to be regarded as in the custody of the law until the publication of the first notice of the issuance of the warrant, and that until such time the insolvent might *bona fide* transfer his property, and that it was subject to seizure under judicial process. Thus, in *Briggs* v. *Parkman*, (1841) 2 Met. 258, it was held that an assignment, under the statute of 1838, vested in the assignee only the property which the debtor had at the time of the first publication of the notice of the issuing of the warrant against him. In 1842, in *Judd* v. *Ives*, 4 Met. 401, on a petition of Judd, an insolvent debtor, asking that proceedings be set aside which had been instituted before a master in chancery under Stat. 1838, c. 163, in considering the question whether the United States bankrupt act which went into operation on the 1st of February, 1842, superseded or suspended the insolvency proceedings referred to, the court, at page 402, said (italics ours):

"But we are nevertheless of opinion, that this consequence of the act is limited to cases instituted under the insolvent law subsequent to the period when the bankrupt law went into operation, and that it cannot supersede or suspend proceedings rightfully commenced under the insolvent act, prior to the time of its going into operation. The counsel for the

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such as may be by law exempted from attachment, with all his deeds, books and papers relating thereto; which assignment shall vest in the assignees all the property of the debtor, both real and personal, which he could by any way or means have lawfully sold, assigned or conveyed, or which might have been taken in execution on any judgment against him, at the time of the first publication of the notice of issuing the above mentioned warrant, although the same may then be attached on mesne process as the property of the said debtor; and such assignment shall be effectual to pass all the said estate, and dissolve any such attachment; and the said assignment shall also vest in the said assignees all debts due to the debtor, or to any person for his use, and all liens and securities therefor, and all his rights of action for any goods or estate, real or personal, and all his rights of redeeming any such goods or estate; and the assignees shall have power to redeem all mortgages, conditional contracts, pledges and liens, of or upon any goods or estate of the debtor, or to sell the same, subject to such mortgage or other incumbrance. . . ."

petitioner admits that it could not, if the property of the insolvent had been actually assigned prior to the first of February, when the bankrupt law went into operation; but he contends, that as the assignment in this case was not actually made until the 7th of February, the whole proceedings were suspended or superseded. Upon consideration, we are of opinion that the proceedings under the commission are not to be thus separated, but that they are to be treated as the parts of one whole; that the assignment not only relates back *to the first publication of the notice*, and vests all the property of the debtor, both real and personal, in the assignee, but that the debtor is divested of his property, before such assignment, by virtue of the warrant to the messenger and the taking of the property of the debtor into custody, by force of which a qualified property in the estate vests in the messenger, insomuch that no act of the debtor, *after the due service and publication of the warrant*, can be lawfully done to make any transfer of his property, or to affect the rights of any of his creditors: That the property is, *by the act of publication*, placed in the custody of the law, in the person of the messenger; and that the judge or master alone can dispose of the same, by the appointment of an assignee to receive it, or by dissolving the process."

In *Clarke* v. *Minot*, (1842) 4 Met. 346, in the course of the opinion, the court, in speaking through Chief Justice Shaw, of the time when under the insolvency laws the insolvent debtor was divested of control over his assets, said:

"The question then recurs, to what time does this assignment relate back? The statute, sec. 5, thus states it: 'Which assignment shall vest in the assignee all the property of the debtor, both real and personal, which he could by any way or means have lawfully sold, assigned or conveyed, or which might have been taken on execution on any judgment against him, at the time of the first publication of the notice of issuing the above mentioned warrant.' This leads directly to the inquiry, what is the time of the first publication thus referred to, and for this we go to the second section. The first section having provided for the issuing of a warrant to a messenger

to take possession, etc., the second section provides as follows: 'The said messenger shall forthwith give public notice, by advertisement, in such newspapers as shall be designated by the judge, and also such personal or other notice to any persons concerned, as the judge shall prescribe.'

"It seems to have been the obvious policy of the statute, to fix some precise point of time, at which the whole property and effects of the debtor shall be deemed to have passed from him, and vested in the assignees. The legislature appear to have intended that a time should be fixed, before which all transfers and conveyances of property by the debtor, made in good faith, and not intended to give preferences, shall be valid; so of all payments in the ordinary course of business, and transfers of property, made without the concurrence of the owner, as by seizure or levy on execution.

* * * * *

"We are now seeking to ascertain and fix the point of time intended by the statute as the time at which all the property of the debtor is changed and his power over it suspended; that point, in other words, prior to which all payments, made by him or to him, all conveyances (not fraudulent) made by him, all seizures, levies and extents of execution upon his property, shall be held valid, and all those, made after, void. It was competent for the legislature to have fixed any other time, as, for instance, the application to the judge, or the act of the judge in issuing the warrant, or the delivery of the warrant to the messenger. Either of these would have afforded security to the creditors, but might have unjustly interfered with the rights of those who had been dealing with the debtor, in good faith and without notice. The time of first publication was fixed, obviously because that act would, in most cases, afford actual notice to those immediately interested; and it was intended as constructive notice to all. But no such effect can be attributed to personal notice to one individual."

In *Butler* v. *Mullen*, (1868) 100 Mass. 453, the rulings above referred to were reiterated. The syllabus of the case is as follows:

"One who has been charged as the trustee of H., by a judgment in the trustee process, and has paid to the judgment creditor, on execution, the sum with which he has been so charged, will not be protected against H.'s assignee in insolvency, if the first publication of the warrant in insolvency against H. was before the rendition of the judgment in the trustee process, though he had no actual notice of H.'s insolvency until after payment."

In delivering the opinion of the court, Hoar, J., at page 454, said (italics ours):

"The payment by the defendants upon the judgment against them as trustees was a valid payment as against Holbrook, his executors and administrators. (Gen. Sts., c. 142, sec. 37.) But it had no validity against a party whose title intervened before the judgment against them was rendered, and whose title was superior to the attachment by which the fund had been held. Not only does the assignment, when made, relate back to the first publication of the notice in insolvency, and vest all the property of the debtor in the assignee, but before the assignment the debtor is so far divested of his property, by virtue of the issuing of the warrant, that *from the first publication* no transfer or conveyance of it can be made which will have any validity against the assignee. Gen. Sts., c. 118, sec. 44; *Clarke* v. *Minot*, 4 Met. 346; *Judd* v. *Ives*, Ib. 401; *Edwards* v. *Sumner*, 4 Cush. 393; *Gallup* v. *Robinson*, 11 Gray, 20."

It being thus made patent that there is no merit in the contention that the operation of the Massachusetts insolvent law was to divest the insolvent of all control over his assets from the mere date of the filing of petition in insolvency, but, on the contrary, that the Massachusetts law only produced such effect from the time of the first publication of the notice of issuing the warrant, it follows, as the levy of the trustee process in Rhode Island was prior to the first publication of the warrant, that the whole theory upon which the argument in this case proceeds is fallacious. It is therefore unnecessary to express any opinion on the legal proposition urged upon our attention on an erroneous conception of the Massachusetts

law. This becomes evident when it is considered that the case as presented does not involve the power of a Massachusetts court to assert control over a citizen of that State in order to prevent him from prosecuting in Rhode Island an attachment levied by him upon property in Rhode Island, in supposed violation of the laws of Massachusetts. On the contrary, the question here is simply whether a citizen of Rhode Island was prevented in the courts of his own State from levying an attachment upon a debt due by a citizen and resident of Rhode Island to a citizen and resident of Massachusetts because such levy was in conflict with the Massachusetts insolvent statutes. And this, although by the statutes of Massachusetts the debt levied on in Rhode Island by the citizen of the latter State, if such debt had been situate in Massachusetts, would have been subject to the disposition and control of the insolvent.

The foregoing considerations would suffice to dispose of the case, but for the fact that it is claimed that as by the Massachusetts statute an assignment by the judge of the insolvent court dissolved attachments made within four months from the first publication aforesaid, therefore, although the trustee process in Rhode Island was issued at a time when the debtor was not divested of control of the claim, nevertheless, by the operation of the Massachusetts law upon the Rhode Island levy, the latter should be dissolved. This contention, however, but asserts that the Massachusetts insolvent statute had, in this particular, an extra-territorial operation, and thereby controlled proceedings validly instituted in Rhode Island. This, however, is in conflict with the elementary doctrine that the insolvent statutes of the respective States do not, to the extent claimed, operate extra-territorially. *Security Trust Co.* v. *Dodd, Mead & Co.*, *supra*, and authorities there cited. Indeed, the fact that the provision of the Massachusetts statutes retroactively vacating attachments does not control attachments levied in other States at a time when under the Massachusetts insolvent law the insolvent had not by operation of law been deprived of the dominion and control over his credits, is recognized in the courts of Massachusetts. Thus, in

Lawrence v. *Batcheller*, (1881) 131 Mass. 504, assignees in Massachusetts of an insolvent debtor were held not entitled to recover from a creditor of such insolvent, though the creditor was a resident and citizen of Massachusetts, the amount of sums realized through garnishment proceedings in New York, Alabama and Arkansas against persons who were indebted to the Massachusetts insolvent. The garnishment proceedings were instituted before the publication of the warrant, but it was not until after the adjudication in insolvency, and after the assignment by the judge of the court of insolvency to the assignees in insolvency, that the attachment proceedings were prosecuted to final judgment and the collections were made under the trustee process. In the course of the opinion, delivered by Field, J., at pages 506, 508, he said (italics ours):

"As the attachments were made prior to the time when the assignment in insolvency took effect, and, *having been made in other States, were not dissolved by the proceedings in insolvency in this Commonwealth*, and were valid by the laws of the States respectively in which they were made, they must prevail over the assignment, unless the statutes of the Commonwealth make a title so acquired *by a citizen of the Commonwealth* void or voidable at the election of the assignees in insolvency.

* * * * *

"In the case at bar, the title to the credits attached, which passed to the assignees by virtue of the proceedings in insolvency, whether it be regarded as a legal or an equitable title, was a title *subject to the attachments*. As neither the common law nor our statutes give any right of action on the facts agreed in this case, the assignees cannot maintain their suit if the attachments were properly made."

See also *Proctor* v. *National Bank of the Republic*, 152 Mass. 223.

Affirmed.